

S. 2205, S. 2421, S. 2564, AND S. 2717

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FOURTEENTH CONGRESS
SECOND SESSION
ON
S. 2205, A BILL TO ESTABLISH A GRANT PROGRAM TO ASSIST TRIBAL GOVERNMENTS IN ESTABLISHING TRIBAL HEALING TO WELLNESS COURTS, AND FOR OTHER PURPOSES
S. 2421, A BILL TO PROVIDE FOR THE CONVEYANCE OF CERTAIN PROPERTY TO THE TANANA TRIBAL COUNCIL LOCATED IN TANANA, ALASKA, AND TO THE BRISTOL BAY AREA HEALTH CORPORATION LOCATED IN DILLINGHAM, ALASKA, AND FOR OTHER PURPOSES
S. 2564, A BILL TO MODERNIZE PRIOR LEGISLATION RELATING TO DINE COLLEGE; S. 2643, A BILL TO IMPROVE THE IMPLEMENTATION OF THE SETTLEMENT AGREEMENT REACHED BETWEEN THE PUEBLO DE COCHITI OF NEW MEXICO AND THE CORPS OF ENGINEERS, AND FOR OTHER PURPOSES
S. 2717, A BILL TO IMPROVE THE SAFETY AND ADDRESS THE DEFERRED MAINTENANCE NEEDS OF INDIAN DAMS TO PREVENT FLOODING ON INDIAN RESERVATIONS, AND FOR OTHER PURPOSES

APRIL 13, 2016

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WEDNESDAY, APRIL 13, 2016

**U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
*Washington, DC.***

The Committee met, pursuant to notice, at 2:20 p.m. in room 628, Dirksen Senate Office Building, Hon. John Barrasso, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

The CHAIRMAN. Good afternoon. I call this hearing to order.

The Committee had scheduled a business meeting to consider authorizing the issuance of a subpoena of Gina McCarthy, the Administrator of the Environmental Protection Agency. Under the Committee rules a subpoena may be authorized upon agreement of the Chair and the Co-Chair or the Vice Chair or by a majority vote of the Committee.

Vice Chairman Senator Tester and I have agreed today to authorize issuing a subpoena to Administrator McCarthy or her Assistant Administrator Mathy Stanislaus to attend. I want to thank Vice Chairman Tester for his support in securing a witness to the hearing.

However, it troubles me that this Committee had to take the extraordinary step of issuing a subpoena to a confirmed Federal official. During the confirmation process, Gina McCarthy agreed under oath that if confirmed, she would appear before congressional committees with respect to her responsibilities. She further agreed under oath to ensure testimony and other documents would be provided to congressional committees in a timely manner.

Despite this sworn testimony, the EPA refused to provide any witnesses, any witnesses, to the Committee field hearing to be held on April 22, 2016 in Phoenix, Arizona. That hearing would continue our oversight on the EPA's response to the devastating toxic spill that it caused and the agency's responsibility to the Indian communities it had harmed.

I am further troubled that the EPA would disregard such failures and attempt to avoid the responsibility by refusing to appear before the Committee and answer questions. This sort of behavior is unbecoming of any Federal official and will not be tolerated.

The subpoena will be served on the EPA later today. With that, I look forward to a productive and meaningful hearing in Phoenix

on April 22. Does any member want to make a statement before we discuss today's legislative hearing?

Senator McCAIN. Mr. Chairman, I would.
The CHAIRMAN. Senator McCain.

**STATEMENT OF HON. JOHN McCAIN,
U.S. SENATOR FROM ARIZONA**

Senator McCAIN. Thank you and Vice Chairman Tester for your cooperation on this issue. It is kind of remarkable that we have to go through this kind of gyration.

I noted a letter sent back to you by a person in the office of Congressional and Intergovernmental Relations. The letter, in part, states, "Further, we understand the Committee is likely to have questions regarding the agency's response to the Gold King Mine incident."

That they regard this disaster as an "incident" is kind of reveals the EPA's sense of dimensions of this disaster and their attitude towards it, which, as you mentioned, there is no question about who caused this devastation to the Navajo Nation. That was individuals at the EPA.

In response, we get, "We understand the Committee is likely to have questions regarding the agency's response to the Gold King Mine incident." No, it is not about the agency's response to the "incident," it is about the circumstances concerning the disaster and what needs to be done to remedy and try to compensate the people and make the lives of the people who have been contaminated by this disaster better.

Also, by the way, they offered up, as you know, one individual who since has resigned. I am not sure that would be exactly what we had in mind.

I thank the Chairman and Vice Chairman for their cooperation. I do not need to outline to members of this Committee or describe to them our obligation to our Native Americans. That is what this Committee is all about.

When there is a disaster caused by another agency of government, then we get this kind of response, that we are forced to subpoena, there is something really out of whack here. I want to thank you.

By the way, I also want to welcome the Chancellor of Diné College. I thank my colleague, Senator Flake, for sponsoring this bill which I am proud to join him in the issue concerning the best way we can help Diné College provide a quality education on the Navajo reservations.

Thank you again, Mr. Chairman. Honestly, sometimes after all these years, the arrogance of bureaucracy continues to surprise me.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator McCain.

Would anyone else like to comment specifically on this issue before proceeding to the specifics of the hearing?

Senator UDALL. I would defer to Senator Tester.

**STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA**

Senator TESTER. I would like to say I think through the good work of the Chairman, I mean that, and the good communication we have, we were able to get the outcome that I think we wanted.

Did the agency make a mistake? Absolutely. They could have done better. We maybe could have done better, but the bottom line is that there Superfund sites all over this Country that need attention. Senator Daines and I have several in the State of Montana.

It is for a different conversation and a different committee, but I do think we need to figure out a way that we can actually empower the EPA to get some of these things cleaned up so we do not have the kind of disasters we had in the southwestern part of this Country.

I just wanted to express my appreciation ultimately for you, Senator Barrasso, and the good working relationship that we have. I very much appreciate that.

The CHAIRMAN. Thank you.

Anyone else? Senator Udall?

**STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you very much, Chairman Barrasso.

Let me echo what has been said. I think it is very important that both the Chairman and the Vice Chairman work together and work through these issues. As Senator McCain said, this is a disaster. It is a very, very important issue to the Navajo Nation, to people who live off the Navajo Nation, who live on the Animas River and the San Juan River.

I think it is important that we all work together to get to the meat of what is going on here that there has been a disaster and it has had a big impact. We need the EPA to be working with us to make sure we make this right.

I am glad the Committee is doing this field hearing. I am glad we were able to reach a resolution where the EPA is testifying. I agree that someone senior from the EPA needs to attend this hearing. I believe that 100 percent and have made it clear to the EPA several times.

Everyone should know Administrator McCarthy visited New Mexico after the spill and disaster. I would like her to go back and help us improve on the recovery progress but I am glad the EPA has offered to send two senior level witnesses for what I hope will be a very productive hearing in Senators McCain and Flake's State.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Udall.

If no one else wants to make a statement, let us head to the bills before us today. We are going to examine five bills: S. 2205, The Tribal Healing to Wellness Courts Act of 2015; S. 2421, A Bill to Provide for the Conveyance of Certain Property to the Tanana Tribal Council and to the Bristol Bay Area Health Corporation and for other purposes; S. 2564, the Diné College Act of 2016; S. 2643, the Pueblo de Cochiti Self Governance Act; as well as S. 2717, the Dam Repairs and Improvements for Tribes Act of 2016.

All of these bills address specific concerns for American Indian and Alaska Native communities. I will turn to the bill sponsors for statements on these bills in a moment.

On October 22, Senators Tester and Franken introduced S. 2205, the Tribal Healing to Wellness Courts Act of 2015. This bill would authorize grants for tribal healing to wellness courts to reduce recidivism among tribal members.

On December 17, 2015, Senators Murkowski and Sullivan introduced S. 2421. This bill would direct the Secretary of the Department of Health and Human Services to convey certain properties to the Tanana Tribal Council and the Bristol Bay Area Health Corporation. Both properties described in S. 2421 will continue to be used to improve health care services in their respective tribal communities.

On February 23, 2016, Senator Flake introduced S. 2564, along with Senators Heinrich, McCain, and Udall. This bill would authorize certain grants for capital improvements for the Diné College, located on the Navajo Reservation.

On March 7, 2016, Senator Udall introduced S. 2643, the Pueblo de Cochiti Self-Governance Act. The bill so amends the Cochiti Wetfields Settlement Agreement to authorize the transfer, operation and maintenance responsibilities for the Cochiti Dam Drainage System from the Federal Government to the Pueblo.

On March 17, 2016, Senator McCain and I introduced S. 2717, the Dam Repairs and Improvements for Tribes Act of 2016 also known as the DRIFT Act. This important piece of legislation would address the safety of dams and flood prevention needs across Indian Country.

According to the Bureau of Indian Affairs, there are 137 high-hazard dams in 42 reservations and over 700 low-hazard dams across the United States. The United States has a trust obligation to maintain and operate these dams and prevent what could be a future dam failure.

Most of the high-hazard dams are in the Western United States, including two high-hazard dams on the Wind River Reservation in my home State of Wyoming, the Washakie and Ray Lake Dams.

On average, these BIA dams are 70 to 80 years old. According to BIA officials, these dams have an estimated maintenance backlog of over \$500 million in deferred maintenance needs. Current funding is not keeping up with the maintenance needs of these dams.

The DRIFT Act would require the Assistant Secretary for Indian Affairs, in consultation with the Secretary of the Army, to address the maintenance backlog of BIA dams by creating a High-Hazard Indian Dam Safety Deferred Maintenance Fund and a Low-Hazard Indian Dam Safety Deferred Maintenance Fund.

The high-hazard fund would receive \$22,750,000 each year for fiscal years 2017 through 2037. The low-hazard fund would receive \$10,000,000 for the same time period.

Neglecting the deferred maintenance needs of these low-hazard dams may result in them becoming high hazard dams in the near future. The DRIFT Act establishes funding priorities based on criteria such as threats to public safety, natural or cultural resources, and economic concerns. The legislation also seeks to make other

important flood prevention and dam safety policy reforms for both the BIA and the U.S. Army Corps of Engineers.

The DRIFT Act is also intended to address additional improvements and safety concerns by establishing a four year pilot program for a BIA flood mitigation program for tribes; establishing a Tribal Safety of Dams Committee within the Department of the Interior to make recommendations to Congress for modernizing the Indian Dam Safety Act; requiring tribes regularly report their dam inventory to BIA; requiring the BIA to report annually on the safety status of their dams to Congress; and authorizing reforms to the U.S. Army Corps of Engineers' Tribal Partnership Program for tribal cost-share requirements for feasibility studies among other provisions.

The threat to public safety in and around Indian Country is a serious concern. It is critical that we make these necessary changes to ensure that tribes and surrounding communities are protected. We need to move this legislation as expeditiously as possible and get it signed into law.

At this time, I would like to turn to other members of the Committee who have opening statements and would like to discuss pieces of specific legislation they may have authored.

I welcome Senator Flake to the Committee, but let me first turn to the Vice Chairman of the Committee, Senator Tester.

Senator TESTER. Thank you, Mr. Chairman.

I want to thank all the panelists for being here today.

I want to say a few words about a piece of legislation in today's hearing, S. 2205, the Tribal Healing to Wellness Courts Act of 2015. I introduced this legislation in October along with Senator Franken. It is a simple bill that authorizes a dedicated funding stream to tribal healing to wellness courts. These healing courts, which are similar to the drug courts, provide alternative sentencing in lieu of incarceration.

Drug courts have had an incredible result in reducing recidivism among offenders. American Indian and Alaska Natives are significantly over-represented in both Federal and State prison populations. Worse, according to the U.S. Sentencing Commission in 2013, Native American offenders were sentenced to prison at a higher rate than all other offenders.

In addition to reducing recidivism, there are economic incentives to these types of courts. According to an analysis by the Urban Institute, current adult drug court systems produce about \$2.21 in benefits for every \$1 in cost for a net benefit to society of about \$624 million.

This legislation would support tribes and tribal communities by providing them with an alternative to prison. These programs have proven to be effective and cost saving. It seems like commonsense to me that if there is a program that works, we should make more investments in those kinds of programs.

While I believe rehabilitation is an integral component of reducing drug use and drug-related crime, we must also give the necessary tools to tribes to protect their communities. That is why yesterday, I introduced the Tribal Youth and Community and Protection Act.

This Act would allow tribes to prosecute anyone who commits a drug offense on tribal lands. We have all seen how criminal activity on tribal lands can go unpunished due to the maze of jurisdictions that includes tribes, States and Federal authorities.

This bill would make it easier for tribes to hold criminals accountable for their actions. The Tribal Youth and Community Protection Act follows one of the key recommendations of the Indian Law and Order Commission to restore tribal authority to prosecute criminal activity that occurs on their lands. The bill was based on feedback from the tribes utilizing their jurisdiction under VALA and I hope to hear more comments from tribes on how to improve the bill even further.

I look forward to working with my colleagues on this Committee and in the Senate on that bill and the Wellness Court bill which we are discussing today. I look forward to hearing from our witnesses today and thank each and every one for the work you do in Indian Country. It is significant and very much appreciated.

Thanks again, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Tester.

Senator Daines?

**STATEMENT OF HON. STEVE DAINES,
U.S. SENATOR FROM MONTANA**

Senator DAINES. Thank you, Mr. Chairman and thanks for your work on the DRIFT Act as well. Supporting tribal infrastructure and needs is crucial to upholding the U.S. Government's trust responsibility to Indian tribes. I am glad we are discussing that here today.

Unfortunately, there are 20 dams in Montana currently classified as high and significant hazard dams on Indian reservations across our State. The possible failure of these dams creates the potential for loss of human life and property damage. Tribes cannot afford to suffer these consequences.

There are two cases in point. First, the Crow Dam on the Flathead Reservation has what the Department of Interior describes as "an unacceptably high probability of failure due to spillway erosion which would likely result in the release of the entire reservoir."

Second, the Four Horns Dam on the Blackfeet Reservation currently has at least seven potential failure modes and to mitigate risk to the surrounding community, the dam is currently in restricted condition.

Without these precautions, two additional failure modes would present further public safety risk. These dams form a significant part of water resources and trust assets for Indian reservations.

I appreciate Senator Barrasso's efforts to address tribal dam maintenance backlog through the DRIFT Act. I remain eager to continue working with the Administration and my colleagues to address these critical infrastructure needs in Indian Country.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Daines.

Senator Udall?

Senator UDALL. Thank you, Chairman Barrasso. Thank you to all the witnesses here today.

I want to particularly thank the Chairman and Vice Chairman for including the Pueblo de Cochiti Self Governance Act in today's hearing. Let me also recognize Governor Garcia who is here with us today and former Governor Suina and Lieutenant Governor Herrera who are here supporting him in the audience. Thank you for making the trip.

This is really a straightforward bill. It would allow Cochiti Pueblo to acquire State trust lands adjacent to the Pueblo and restore its ancestral homelands. It is supported by nearby landowners and governments and the land will not be used for gaming.

The change will allow the State of New Mexico to acquire other land where it can earn revenue. I will briefly explain the purpose of the bill.

Several decades ago, the Federal Government flooded the Cochiti Pueblo's ancestral land to build the Cochiti Dam. To settle damage claims by the Pueblo and to address seepage issues from the dam, the government later built a drainage system and provided \$4.5 million for its operation and maintenance.

The balance has increased to roughly \$6.6 million in 2014; meanwhile, maintenance has cost about \$87,000 a year. This bill would allow the Pueblo to access those funds to buy back the ancestral homelands.

The Pueblo has worked with all stakeholders: the Army Corps of Engineers, the Interior Department and the State of New Mexico. The bill would also end Federal liability for the operation and maintenance of the drainage system. I will let Governor Garcia further explain this in testimony and look forward to the questioning.

I also want to address another bill before this Committee today. I was proud to join Senators Flake, Heinrich and McCain in introducing legislation to reauthorize Diné College. I want to thank Dr. Ahumada, interim President of Diné College, for being here.

I also look forward to working with this Committee to see that bill gets through the process and is passed. It is an important part of the commitment we all share to students across Indian Country to ensure they have strong opportunities to reinforce their connection to Native language and culture and to get an excellent education and move up.

With that, thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Udall.

Senator Murkowski?

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman.

I would like to thank you and the Ranking Member for ensuring that we have two bills before the Committee this afternoon, the Tanana Tribal Council and the Bristol Bay Area Health Corporation land transfers.

These are important bills in these specific regions up in the interior and in Bristol Bay that will help increase access to much needed health care to Alaska Natives and non-Natives in both regions. I am hopeful that the Administration will continue its support of both efforts in this proposal.

As you well know, I have spoken many times in this Committee about the fact we face many barriers in the State as it relates to offering quality and affordable health care. One of these barriers is proximity.

The community of Tanana is located on the Yukon River in interior Alaska. It is an isolated community, one that is accessible by plane or by boat. It is a long boat ride or you can take a pretty long and oftentimes very dangerous snow machine ride in the winter but it makes access to health care particularly difficult.

When someone is injured or sick, the cost of a medevac can be as much as \$30,000 to be flown into Fairbanks or Anchorage. It is just not sustainable, so we need to do all that we can to help our tribes to provide the best health care possible whenever possible within their communities.

The Committee has also heard me mention the youth of Tanana. There is a group of you people associated with the 4-H there that have really stood out in their community and said, we want a healthier community. Help us with that.

One of the provisions in the bill before us today with the transfer to the Tanana area is to provide for a wellness center. The Tanana Tribal Council is looking to have a wellness center.

I would like to thank Julie Roberts-Hyslop who is from Tanana. She is here today. She served on the Tanana Tribal Council and is Vice President of the Regional Organization of Tanana Chiefs Conference, a real leader within the region.

I appreciate so much, Julie, that you have made this long trip to be here to speak on this very important legislation.

Behind her, we also have Robert Clark, the President and CEO of the Bristol Bay Area Health Corporation. BBAHC is located in Dillingham, Alaska. They deal with many of the same barriers as Tanana.

This legislation is needed to allow BBAHC to expand dental care for more than 8,000 people within their service region. Think about that, dental care for 8,000 people in an area where services have been limited.

The health facilities in Dillingham, operated by BBAHC, are the hub for many, many surrounding communities and are vital to health in the region. I would like to thank you, Robert, also for making the long trek and being here.

Again, Senator Barrasso and Senator Tester, thank you for the opportunity to present both of these measures before the Committee.

The CHAIRMAN. Thank you, Senator Murkowski.
Senator Franken?

**STATEMENT OF HON. AL FRANKEN,
U.S. SENATOR FROM MINNESOTA**

Senator FRANKEN. Thank you, Mr. Chairman and Vice Chairman Tester for holding this legislative hearing taking up the Tribal Healing and Wellness Courts bill. I want to thank all the witnesses testifying here today.

I am honored to introduce Judge Paul Day of the Leech Lake Band of the Ojibwe as a witness today. On December 14, 2012, Judge Day was sworn in as the Chief Judge of the Leech Lake

Tribal Court. Judge Day graduated from St. Cloud State University in 1970 with a Bachelor's Degree and from the University of Minnesota Law School in 1978.

Judge Day has been in private practice and served as an Assistant U.S. Attorney for the District of Minnesota and worked in the legal department for Honeywell as senior counsel. Prior to his appointment as Chief Judge, Paul was the executive director of the Anishinaabe Legal Services, a program to provide legal services to low income residents at Leech Lake, White Earth and Red Lake Reservations.

Judge Day comes from a very large, traditional family. He is the eighth of 15 children born to John and Gladys Day, a lot of healing and wellness there.

Today, Paul is the keeper of the family ceremonial drum, sweat lodge and pipe. Judge Day is also involved in the Anishinaabemowin language revitalization so the ceremony is given to the Ojibwe for health and well being can be available for future generations.

Judge Day's commitment to community and to his culture has made him the ideal person to preside over the Leech Lake Band of the Ojibwe's wellness courts. As Judge Day will explain more thoroughly in his testimony today, the wellness courts have been a great success for the Leech Lake Band and their partners. The wellness courts have fostered positive relationships in the region resulting in better exchanges of ideas and cultural understanding.

Thank you, Judge Day, for your testimony today and coming all the way from Minnesota. I know that is a great hardship. That is a joke because I do that all the time.

The CHAIRMAN. Thank you, Senator Franken.

Senator Flake, welcome to the Indian Affairs Committee. Thank you for being here to discuss your legislation.

**STATEMENT OF HON. JEFF FLAKE,
U.S. SENATOR FROM ARIZONA**

Senator FLAKE. Thanks for having me here.

Right now, I am sure the witnesses are wondering if they will ever get to testify. I will be very brief.

I just want to thank Senator Udall, Senator McCain and Senator Heinrich for co-sponsoring this legislation.

This is the Diné College Act. We want to reauthorize college through 2020. We are glad to have the interim president here with us today.

Diné College is vital to the State, to the region and to the areas encompassing the reservation, Utah, New Mexico and Arizona. It has an enrollment of about 1,500 at last count. It has a critical role to play in providing opportunities for higher education and to improve the economic condition of those on and off the reservation.

Last week, Navajo Nation President Russell Begay sent a letter to Chairman Barrasso and Vice Chairman Tester expressing strong support. Also, our Governor, Doug Ducey, has chimed in with support as well.

Diné College has the support, obviously, of Northern Arizona University, Arizona State University and the University of Arizona as well as the entire Board of Regents.

It has broad support from a bipartisan group of members here and I hope we can move this legislation

Thank you for being here.

Thank you, Mr. Chairman, for having me. I will submit my entire statement for the record.

[The prepared statement of Senator Flake follows:]

PREPARED STATEMENT OF HON. JEFF FLAKE, U.S. SENATOR FROM ARIZONA

I would like to thank Chairman Barrasso and Vice-Chairman Tester for holding this important hearing today. I'm pleased the committee is including S. 2564; the Diné College Act in today's hearing and would like to thank Senators McCain, Udall, and Heinrich for being original cosponsors of this legislation. Tribal colleges play an important role in providing Native Americans with greater access to higher education and preparation for entering the workforce. This is especially important for the state of Arizona, which is home to the third highest Native American population in the country. I introduced the Diné College Act of 2016 to help ensure that these opportunities would continue to be available to students. The Diné College Act is bipartisan legislation that reauthorizes the college through 2020. Established in 1968, Diné College was the first fully accredited and tribally-controlled college in the United States. The college awards associate and bachelor degrees and certificates to a predominantly Navajo Nation student population and is rooted in Diné language and culture. In 2015, Diné College reported an enrollment total of more than 1,500 students at locations across the reservation that spans the states of Arizona, New Mexico, and Utah. Throughout its history, the Diné College has played a critical role in improving educational opportunities and social and economic conditions for the Navajo Nation and its people. Last week, Navajo Nation President Russell Begaye sent a letter to Chairman Barrasso and Vice Chairman Tester expressing strong support for the reauthorization of the Dine College act. In addition to support from the Navajo Nation, Arizona Governor Doug Ducey said that "Diné College is a vital part of the higher education pipeline and serves as a bridge between tribal communities and Arizona's workforce." Diné College continues to play a significant role in Arizona's higher education system and also has support from the Arizona Board of Regents, Northern Arizona University, Arizona State University, and the University of Arizona. Dine College has broad support and I thank the Committee for allowing me the opportunity to speak on behalf of this important legislation today.

The CHAIRMAN. Thank you, Senator Flake. We are glad to have you.

If there are no other member statements, let us move to our witnesses.

We have with us: Mr. Michael Black, Director of the Bureau of Indian Affairs, Department of the Interior, Washington, D.C.; the Honorable Nicholas Garcia, Governor, Pueblo de Cochiti of New Mexico; the Honorable Paul W. Day, Chief Judge, Leech Lake Band of Ojibwe of Cass Lake, Minnesota; Dr. Martin M. Ahumada, Interim President, Diné College, Arizona; and Ms. Julie Roberts-Hyslop, Vice Chair, Tanana Tribal Council from Alaska; accompanied by: Mr. Robert Clark, President/CEO, Bristol Bay Area Health Corporation.

I want to welcome all of you. I want to remind the witnesses that your full written testimony will be made a part of the official record today. Please try to keep your statements to five minutes or less so that we have more time for questions.

I look forward to hearing your testimony, beginning with Director Black. Please proceed.

**STATEMENT OF MICHAEL S. BLACK, DIRECTOR, BUREAU OF
INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR**

Mr. BLACK. Good afternoon, Chairman Barrasso, Vice Chairman Tester and members of the Committee.

My name is Mike Black. I am Director for the Bureau of Indian Affairs at the Department of Interior.

Thank you for the opportunity to provide the department's position on S. 2643, the Pueblo de Cochiti Self Governance Act; S. 2717, the Dam Repairs and Improvements for Tribes Act of 2016; and S. 2564, the Diné College Act of 2016.

Regarding S. 2643, the Pueblo de Cochiti Self Governance Act, the Pueblo de Cochiti has administered, operated and maintained the Cochiti Dam drainage system for three decades pursuant to agreements under the Self Determination Act. The drainage system was established by the United States in order to settle claims by the Pueblo de Cochiti for damages to the Pueblo's agricultural lands caused by seepage from the Cochiti Dam.

S. 2643 would endorse a newly-executed agreement between the United States and the Pueblo whereby the Pueblo will assume legal and financial responsibility for the administration and management of the Cochiti Dam drainage system and will release the United States from liability associated with that drainage system.

The newly executed agreement will permit the Pueblo to use part of the existing drainage system operational maintenance funds for a land purchase will be used in the land exchanged to restore Pueblo ancestral homelands adjacent to the reservation at no expense to the United States or any State or local government.

Through the land exchange, the Pueblo will acquire the Cañada de Cochiti, a parcel of Pueblo's ancestral lands. The Cañada de Cochiti is currently owned by the State of New Mexico. The Pueblo's ancestral villages and numerous sacred sites are located within the Cañada de Cochiti.

For 75 years, the Pueblo has sought to restore and return these historically and culturally significant lands to its reservation. The exchange will provide a direct benefit to the State of New Mexico as well as allow the State to acquire more productive, income generating land.

S. 2643 represents a significant and historic accomplishment for the Pueblo. Restoring the Cañada de Cochiti to the Pueblo is a fundamental element of the bill. Acquiring this land is a vital priority for the Pueblo.

There is an agreed upon timeframe for completing the land exchange with the State. Without S. 2643, as endorsement of the October 27, 2015 amendment to the Wetfields Settlement Agreement, the Pueblo will be unable to obtain funding necessary to fulfill the land exchange agreement with the State of New Mexico in the time period allotted. The department supports S. 2653.

The intent of S. 2717, the DRIFT Act of 2016, is to improve the safety and address the deferred maintenance needs of Indian dams to prevent flooding on Indian reservations. The department supports the intent of this bill.

The Act would allow the Bureau of Indian Affairs to improve maintenance of high hazard potential dams and the safety of Dams Program, establish a program for inspecting and maintaining low

hazard potential dams, establish a Safety of Dams Committee for recommending updates to the Indian Dams Safety Act of 1994, and run a four year flood plain management pilot program.

Within the discretionary spending cap set by Congress, the President's budget has emphasized the mission of the Safety of Dams Program, including a \$2 million increase to the program in the President's fiscal year 2017 budget.

The department believes that discretionary funding is the appropriate mechanism to improve the safety at BIA dams because it considers Federal investments in such projects within the context of current fiscal constraints and other departmental priorities.

The department supports the goal of improving the safety of BIA dams and allowing tribal communities to realize full benefits of dams on their reservation. We look forward to working with you to address the best means of doing so given the current budget constraints.

S. 2564, the Diné College Act of 2016, is a bill to modernize prior legislation relating to Diné College and would provide funding to strengthen institutions of higher education, particularly the Diné College and subsequent college branch locations located within the Navajo Nation.

S. 2564 directs the college to prepare and submit inventory that identifies the renovations and repairs necessary to meet the health and safety standards of the college and any other requirements the college determines is necessary to the Secretary by October 1, 2016.

The department is concerned that S. 2564 does not take into consideration the potential need to change this date in the event the college is unable to meet this deadline. The department recommends adding additional language that provides an alternative if the college is unable to meet this deadline. Also, if the college is unable to meet the deadline, that could put some onus on the department being able to meet the January 2017 deadline.

The department supports S. 2564 with some amendments.

This concludes my statement. I am happy to answer any questions the Committee may have.

[The prepared statement of Mr. Black follows:]

PREPARED STATEMENT OF MICHAEL S. BLACK, DIRECTOR, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

S. 2564

Good afternoon Chairman Barrasso, Vice Chairman Tester, and members of the Committee. My name is Mike Black. I am the Director for the Bureau of Indian Affairs at the Department of the Interior (Department). I am here today to provide the Department's position on S. 2564, the Diné College Act of 2016.

The Department supports S. 2564, with amendments and also has a concern with the legislation.

Background

Nearly four decades ago, Congress passed the Navajo Community College Assistance Act of 1978 (P.L. Pub. L. 95-471), and provided for a facilities study to be completed by the Department by August 1978. The 1978 Facility Study was never completed and funding for the Navajo Community College, now the Diné College, construction and facilities were never appropriated. In 2008, Congress passed the Navajo Nation Higher Education Act. Language in the 2008 Act provided that the Secretary for the Department "shall conduct a detailed survey and study of the academic facilities needs of Diné College, and shall report to the Congress not later than October 31, 2010, the results of such survey and study. Such report shall in-

clude any recommendations or views submitted by the governing body of such College and by the governing body of the Navajo Nation, and shall include detailed recommendations by the Secretary as to the number, type, and cost of academic facilities which are required, ranking each such required facility by relative need.” However, the Department was unable to provide this mandated report in the 2008 Navajo Nation Higher Education Act due to the lack of necessary information from the College necessary to compile and complete the report.

In adherence to the original 1978 congressionally mandated facility study for the College, the BIA Navajo Regional Office made numerous attempts to work with the College leadership to attain the data needed to include in prior mandated reports to Congress. The BIA Navajo Regional facilities staff and IA Division of Facilities Management and Construction (DFMC) staff have met with the College over the last couple of months to resolve the data requirements and coordinate efforts to address this need.

As of April 5, 2016, the following documents were pending submission or being revised by the College and resubmitted to the BIA Navajo Region:

- Environmental Data (Pending),
- Drawings of the campus site (being revised),
- Annual Operations and Maintenance actual costs for the site (being revised), and
- Information Technology Assessment (being revised).

The detail required from the College will assist the Department in calculating actual costs for an accurate Report to Congress. The Navajo Regional Facilities staff and DFMC will continue to work with the College to clarify the data and inventory requirements to facilitate a comprehensive and accurate survey to identify the needs of the College. The College is including facility locations and inventory needs outside the main Tsaile Dine College location; for example, Shiprock, New Mexico, Tuba City, Arizona, and Crownpoint, New Mexico. The Department recommends the facility study be limited to the Tsaile, Arizona College location.

S. 2564

S. 2564, a bill to modernize prior legislation relating to Diné College, would provide funding to strengthen institutions of higher education, in particular, the Diné College (College), located in Tsaile, Arizona, on the Navajo Nation, and subsequent College branch locations located within the Navajo Nation. S. 2564 directs the College to prepare and submit an inventory that identifies the renovations and repairs necessary to meet the health and safety standards of the College and any other requirements the College determines is necessary to the Department’s Secretary by August 1, 2016. The Department is concerned that S. 2564 does not take into consideration the potential need to change this date in the event that the College cannot meet this deadline. The Department recommends adding additional language that provides an alternative if the College cannot meet the deadline.

Upon receipt of the inventory provided by the College, the Secretary shall use the inventory as baseline data to inform and conduct a detailed survey and study of all the capital projects and facility needs of the College. Thereafter, the Secretary shall submit a report on the results of the survey and study to appropriate committees of Congress by January 31, 2017. The report shall include recommendations by the Secretary and any recommendations or views submitted by the College or the Navajo Nation regarding the capital projects and facility needs of the College. The Department is concerned that S. 2564 does not take into consideration the potential need to change the Secretary’s deadline for delivering the Report to Congress, as stated in S. 2564. In the event that the College fails to meet its deadline, such delay would result in a delay in the Secretary’s Report to Congress. The Department recommends adding or amending the legislation to provide flexibility in the Secretary’s Report delivery to Congress. S. 2564 also states that the Secretary may use amounts made available to the Secretary in general administrative appropriations to complete survey, study and report. As written, the Department will have to absorb the additional costs for this activity. Given our already limited resources, we propose amending the legislation to make it subject to appropriations.

S. 2564 also authorizes appropriations to the Secretary over four years (\$2 million per year) in grants to the College, for a total amount of \$8 million, for construction activities, including the renovation and repair or construction of buildings, water and sewer facilities, roads, information technology and telecommunications infrastructure, classrooms, and external structures (such as walkways) identified in the survey, study, and report. Although the Secretary’s survey, study, and the report do not require operations and maintenance to be included, S. 2564 authorizes the Sec-

retary to make grants to the College for operations and maintenance, subject to congressional appropriations over four years.

The Department is aware that the Navajo Nation (or the College) hired an architectural firm, Dyrion Murphy Architects, P.C., in October 2013 to conduct a facilities assessment of the College campus and branch locations. The report is titled “Facility Assessment and Recommendation.” The Department understands that the assessment prioritized the needed work, starting with life safety, structures and other needs related to the physical condition of the College campus and its branch locations. The main College sits on approximately 1,005 acres.

S. 2717

Good afternoon Chairman Barrasso, Vice Chairman Tester, and members of the Committee. My name is Michael Black and I am the Director for the Bureau of Indian Affairs. Thank you for inviting the Department of the Interior (Department) to provide testimony on S. 2717, the Dam Repairs and Improvements for Tribes Act of 2016. We appreciate the Committee’s leadership in addressing dam safety concerns on Indian lands.

The intent of S. 2717, the DRIFT Act of 2016, is to improve the safety and address the deferred maintenance needs of Indian dams to prevent flooding on Indian reservations. The Department supports this intent.

The Act authorizes the establishment of two special funds—one for a maximum of \$22,750,000 a year for twenty years (2017–2037) and the other for \$10,000,000 each year for the same time period—for a total allocation of \$655 million to the Bureau of Indian Affairs (BIA) Safety of Dams special funds. Any subsequent expenditure from these funds would be subject to appropriations. The Act would allow the Bureau of Indian Affairs to improve maintenance of high-hazard potential dams in the Safety of Dams Program, establish a program for inspecting and maintaining low-hazard potential dams, establish a Tribal Safety of Dams Committee for recommending updates to the Indian Dam Safety Act of 1994 (P.L. 103–302), and run a four-year floodplain management pilot program.

Within the discretionary spending caps set by Congress, the President’s Budget has emphasized the mission of the Safety of Dams Program, including a \$2 million increase for the program in the President’s FY 2017 Budget. The Department believes that discretionary funding is the appropriate mechanism to improve the safety of BIA dams, because it considers federal investments in such projects within the context of current fiscal constraints and other Departmental priorities. The Department supports the goals of improving the safety of BIA dams and allowing tribal communities to realize the full benefits of dams on their reservations, and we look forward to working with you to address the best means of doing so given current budget constraints.

Bureau of Indian Affairs Safety of Dams Program Background

Many BIA dams are vital to the tribes and local communities where they are located. The BIA is responsible for maintaining and rehabilitating all of the dams on Indian lands per the Indian Dams Safety Act of 1994. The BIA Safety of Dams Program’s mission is to reduce the potential loss of human life and property damage caused by dam failure. The Safety of Dams Program contracts or compacts with Indian Tribes to perform many aspects of the Program. The BIA retains ultimate responsibility for Program dams. The Safety of Dams Program has approximately \$23 million in annual funding, of which \$10 to \$12 million is allocated for the rehabilitation of Program dams, and the remainder of funds are allocated to activities such as security, emergency management systems and inspections and evaluations. The estimated current value of deferred maintenance costs is \$556 million. Since 2010, the cost of deferred maintenance has increased approximately 6 percent per year.

The Safety of Dams Program also has the responsibility for determining the hazard potential classification of all dams located on tribal lands. Many known dams have not had a hazard potential classification assigned, and it is likely that there are more dams on tribal land that have not been identified. Additionally, hazard potential classifications may change with new downstream developments. Continued monitoring of low-hazard structures may be necessary to confirm their classifications. The BIA is responsible for more than 700 low-hazard or unclassified dams across the United States. The Safety of Dams Program currently administers 137 high- or significant-hazard potential dams on 41 Indian reservations. Under current policy only high- and significant-hazard dams are inspected, evaluated and maintained by the BIA Safety of Dams Program.

Currently, activities for all high- and significant-hazard potential dams in the BIA Safety of Dams Program include:

- Dam evaluation, design, construction, operations, and maintenance;
- Dam security;
- Early warning systems;
- Emergency management; and
- Floodplain management downstream of BIA dams.

Each of these program areas is described in detail below.

BIA Safety of Dams Program Activities and Funding Impacts

Dam evaluation, design, construction, operations, and maintenance

As noted, the primary goal of the BIA Safety of Dams Program is to protect downstream residents from risks associated with dam failures. Dam safety projects are identified through an established evaluation process, whereby the agency evaluates each dam facility through inspections, and reviews to understand the risks presented by each dam. These evaluations lead to recommendations around future design, construction, and operations and maintenance. The Program utilizes a risk-informed decision process to prioritize dam repairs, reduce deferred maintenance, and conduct associated dam safety actions. This approach is consistent with that of other federal agencies responsible for dam safety, including the Bureau of Reclamation, the U.S. Army Corps of Engineers, and the Federal Energy Regulatory Commission. As hazard classification potentials are updated, the number of high- and significant-hazard potential dams may increase, if that happens, maintenance and evaluation requirements will also increase.

The BIA Safety of Dams Program adopted the aforementioned updated evaluation and prioritization system in 2012. Since then, 34 of the identified 137 high- and significant-hazard dams have been evaluated. Of those 34, 14 (approximately 42 percent) have been identified as presenting unacceptable risks. These facilities will require risk reduction measures, which often include construction modifications. Costs for these construction modifications vary widely, but are generally between \$1 and \$25 million per facility. Current funding allows for modification of the highest priority of the known high-hazard potential, high risk facilities. Typically, one to three facilities undergo construction modifications each year.

Many BIA dams present risks that exceed the tolerable risk guidelines established by the federal dam safety community. Additional construction modifications would reduce deferred maintenance and improve the safety of BIA dams.

Dams, if they are low hazard, can provide significant value to the communities they serve, including irrigation, livestock watering, flood mitigation, wildlife habitat and recreation. The Act would initiate an inspection, review, prioritization, and maintenance program for low-hazard potential dams. The BIA establishes temporary risk reduction measures at identified high risk facilities with deferred maintenance which reduce risk, but the intended benefits of these facilities are often lost. Reducing the deferred maintenance allows for realization of the benefits provided by these facilities without unacceptable risk of loss of life.

For example, one facility in the program that provides irrigation and fishery benefits presents unacceptably high risk. To mitigate short term risk, the water level was lowered significantly. This restriction reduced the irrigation storage by approximately half and reduced the productivity of the fishery. Many facilities have similar operational restrictions.

Dam Security

The BIA Safety of Dams Program is in the process of conducting a review of the security measures in place at all high- and significant-hazard potential dams in the Program. Security reviews have resulted in many recommendations to increase or modify the existing security measures based on analysis of the risk, vulnerability, and consequences at each dam. Funding provided by this Act would allow the Program to implement these recommended security measures at the highest risk dams, further protecting the Indian communities downstream of these dams.

Early Flood Warning Systems

It is well documented from historical dam failures and hazardous flood events that loss of life due to flooding is highly dependent on the amount of warning time received by downstream residents. The BIA currently operates a network of approximately 300 real-time early flood warning system sites for 120 Program dams located on 37 reservations. The current system is designed to address unique data and communication challenges for BIA dams, which are often located in rural, mountainous areas with unique access, power, and telemetry issues. In the event of a dam failure, this system increases the time available to evacuate communities downstream of BIA dams.

The effectiveness of an early warning system in providing critical response time in the event of a dam failure depends on continual system maintenance and investment. Despite extensive system upgrades in recent years, there are high-hazard potential dams currently using outdated technology and others without early warning systems. For example, significant improvements could be made within the web-based data network to make it more user-friendly and applicable to specific tribes' monitoring and flood warning needs.

Emergency Management

The Indian Dam Safety Act requires that all high- and significant-hazard dams have current updated Emergency Action Plans in the event of an incident that may jeopardize the integrity of the dam. These Emergency Action Plans outline procedures for notifying the downstream jurisdictions in the event of a potential dam failure so that warning and evacuation can be effectively performed to minimize loss of life and property. Practical exercises are conducted every five years to train the dam safety staff and local emergency response staff to act swiftly and effectively in the event of a dam failure.

These exercises may meet the minimum requirements of Department of Homeland Security and Department of Interior directives, but this timeframe is often insufficient to meet tribal needs. Within tribal departments, there is often a high staff turnover rate, therefore more frequent training regarding emergency procedures would provide additional opportunities to prepare and equip these communities to effectively respond to potential dam safety and other emergency incidents. The Emergency Action Plans and procedures rely on accurate flood zone mapping. Modern technologies have improved flood zone mapping to more effectively guide emergency response procedures.

Floodplain Management Downstream of BIA Dams

Flooding is one of the most common and destructive natural hazards confronting tribal communities. Despite this, natural flood risks throughout most tribal lands are poorly understood. In 2013 the Government Accountability Office (GAO) published a report to Congressional Committees titled Flood Insurance: Participation of Indian Tribes in Federal and Private Programs (GAO-13-226). This report stated that "as of August 2012, just 37 of 566 federally recognized tribes (7 percent) were participating in the National Flood Insurance Program (NFIP)." It was noted that "FEMA has not placed a high priority on mapping rural areas, including many Indian lands, for flood risk, and most tribal lands remain unmapped." GAO-13-226 continued, "Without flood-hazard maps, tribal communities may be unaware of their flood risk, even in high-risk areas." The Safety of Dams Program has attempted to supplement tribal understanding of flood risks through the development of Non-Dam-Failure Advisory Flood maps. These maps have been created with tribal community input to depict flooding scenarios downstream of BIA dams that can be used by community leaders for land-use planning and increased public awareness of natural flood risks. To date, the Safety of Dams Program efforts to support tribal floodplain management have been confined to waterways directly downstream of BIA dams. With the implementation of the Flood Plain Management Pilot Program in this proposed Bill, the Safety of Dams Program would be able to assist tribes in developing enhanced understanding of local flood risks in the natural floodplains within tribal communities.

S. 2717

S. 2717 would create two funds, a "High-Hazard Indian Dam Safety Deferred Maintenance Fund, and a "Low-Hazard Indian Dam Safety Deferred Maintenance Fund" in the Department of the Treasury from the reclamation fund that was established in the Act of June 17, 1902 (32 Stat. 388, chapter 1093). The High Hazard Dam Fund would be authorized to receive a maximum of \$22,750,000 per year for 20 years for a total allocation of \$455 million. The High Hazard dams eligible for funding under section 201 (b) (1) are current and all future dams covered under the Indian Dam Safety Act (P.L. 103-302). S. 2717 would also establish a Low-Hazard Indian Dam Safety Deferred Maintenance Fund which would be authorized to receive \$10,000,000 each year for the same time period, for a total allocation of \$200 million. The Low Hazard Potential dams eligible for funding under section 201(b)(2) are all dams covered under the Indian Dam Safety Act (P.L. 103-302).

S. 2717 would expand the BIA Safety of Dams Program by providing mechanisms to address low-hazard potential dams and for the Tribal Safety of Dams Committee to study and recommend updates to the Indian Dam Safety Act of 1994.

Opportunity exists for the Tribal Safety of Dams Committee to update the Indian Dam Safety Act of 1994 to better align with current standards of practice within the Federal dam safety community. These updates might include changes in the def-

inition of hazard potential classification to align with the guidelines published by the Federal Emergency Management Agency (FEMA) titled “Federal Guidelines for Dam Safety: Hazard Potential Classification System for Dams” (FEMA Publication Number 333) and changes in action prioritization of the Maintenance Action Plan to better align with the methodology of the “Federal Guidelines for Dam Safety Risk Management” (FEMA Publication Number P-1025). The Tribal Safety of Dams Committee should also consider updates to allow funds to be used, where appropriate and requested by Tribes, for the removal of dams in order to eliminate the safety hazards posed by deteriorating dams, reduce the long-term costs to tribes and the Federal government for maintenance and repair, restore ecosystem health, and improve opportunities for economic development and recreation.

Aside from our policy stance on the bill, there are a number of technical imperfections within the current draft of S. 2717. For example, Section 214 would amend the Water Resources Development Act of 2000 such that the Secretary would be required to issues guidance 180 days after the enactment of the Water Resources Development Act of 2014. The Department would be happy to work with the committee to correct such imperfections.

Conclusion

The mission of the Safety of Dams Program is to protect, to the extent practicable, people who reside in or who otherwise occupy land downstream from the risk BIA dams pose. Enacting certain sections of S. 2717 would advance this mission by enabling the BIA Safety of Dams Program to better fulfill its trust responsibility to tribes. S. 2717 would improve dam safety regulation and floodplain management on Indian lands.

The overall intent of S. 2717, the DRIFT Act of 2016, is to improve the safety and address the deferred maintenance needs of Indian dams to prevent flooding on Indian reservations. The Department supports the intent of this legislation and would be happy to work with the committee to amend S. 2717 such that we could support the amended bill.

This concludes my prepared statement. I will be happy to answer any questions you may have.

The CHAIRMAN. Thank you very much, Mr. Black. We appreciate your being here.

Next, I will turn to Governor Nicholas Garcia.

STATEMENT OF HON. NICHOLAS GARCIA, GOVERNOR, PUEBLO DE COCHITI, NEW MEXICO

Mr. GARCIA. Chairman Barrasso, Ranking Member Tester, and members of the Committee, on behalf of the Pueblo de Cochiti, I thank you for holding this hearing and providing us with the opportunity to discuss the Pueblo de Cochiti Self Governance Act.

This legislation reflects the positive evolution and healing process that follows a difficult history of culture and economic harm to the Pueblo de Cochiti from the adverse impacts caused by the Cochiti Dam. To fully understand the importance of this legislation to our people and the valuable objectives it achieves, you must first know a bit about Pueblo de Cochiti and our experience with the Cochiti Dam.

The Pueblo de Cochiti is a federally-recognized tribe of approximately 1,500 members located in New Mexico approximately 50 miles north of Albuquerque. Our ancestors have resided in this area for more than 1,000 years. We once occupied the lands that are now the site of the Bandelier National Monument.

The cultural life of the Pueblo revolves around our land. Our economy has historically been based on agriculture. Many of our rituals and ceremonies are tied to events in the agricultural calendar.

Congress authorized construction of the Cochiti Dam in the Flood Control Act of 1960 and the dam was completed in 1975. Built by

the U.S. Corps of Engineers on Cochiti land, the dam is one of the largest earthen dams in the United States. Cochiti Dam and its surrounding waters occupy 11,000 acres of the Pueblo's ancestral lands.

While those downstream have benefitted from the dam's protection from Rio Grande flooding as intended, the construction of the dam imposed great hardship on our Pueblo. The whirlpool rock that is sacred to Cochiti and other Pueblos is within the dam area.

Despite promises from the engineers that the rock would not be affected by the dam, it was one of the sites destroyed by the dam, impeding our religious practices and those of our neighboring Pueblos.

Additionally, for over two decades, groundwater seepage from under the dam flooded Cochiti agricultural fields making them unusable, causing the Pueblo to cease for more than a generation.

The seepage problem and the damage it caused was not corrected by the United States until our Pueblo brought a lawsuit which was originally filed in 1980. Known as the Cochiti Wetfields litigation, the lawsuit was settled in 1990 when the United States agreed to build a drainage system to channel groundwater seepage from the dam points beyond our fields. The settlement also provided \$4.5 million for the operation and maintenance of that drainage system.

The Pueblo has administered, operated and maintained the Cochiti Dam drainage system for three decades pursuant to agreements under the Indian Self Determination Act. Despite the loss of farming in our community for more than a generation, through an agricultural restoration program, fields are now today productive and many of our members maintain a livelihood or supplement their income through cultivating traditional crops of beans, corn and squash as well as alfalfa and grain.

S. 2643 endorses the 2015 amendment of the Wetfields Settlement Agreement that the Pueblo, the Corps and the BIA executed in order to accomplish three objectives.

Number one was to promote Cochiti self determination by transferring responsibility for the operation and maintenance of the Cochiti Dam drainage system to the Pueblo. Two was to release the United States from any and all liability associated with the drainage system. Third was to expand the authorized uses of accumulated drainage system reserve funds for the acquisition of ancestral lands known as the Cañada de Cochiti, Cochiti Canyon.

The third objective reflects the development of an exceptional opportunity for the Pueblo to reacquire culturally significant ancestral homelands adjacent to the Cochiti Reservation at no expense to the United States, any State or local government. The Pueblo's ancestral villages and numerous sacred sites are located in the Cañada de Cochiti. For 75 years, the Pueblo has sought to restore these historically and culturally significant lands to its reservation.

The land is owned by the State of New Mexico. Several years ago, the Las Conchas fire ravaged the area, destroying all productive activity on that land. The Pueblo entered into a lease agreement with the State with an option to acquire the parcel through a land exchange agreement.

If the Pueblo purchases property of equivalent value for the State, the State will transfer its ownership of the Cañada to the

Pueblo. Our challenge, however, is obtaining funding needed to purchase lands of equivalent value for the exchange with the State.

The Pueblo de Cochiti is not involved in gaming and has limited economic development programs. The Cañada de Cochiti was appraised at approximately \$5 million.

The Pueblo will be able to purchase real property of equivalent value only if it were authorized to utilize a portion of its accumulated reserve fund in the Cochiti Dam drainage system operations and maintenance fund.

The amendment to the Wetfields Settlement Agreement in 2015 transfers to the Pueblo the authority and responsibility for the administration of that drainage system and will modify the purpose of that to include this acquisition of land. The acquisition involves no controversy with other landowners or governments and will not be used for gaming purposes.

The exchange will provide a direct benefit to the State of New Mexico because it will allow the State to acquire more productive, income generating land. Meanwhile, the Pueblo will use the Cañada de Cochiti land for cultural purposes. The Pueblos conducted engineering and cost analyses of the drainage system's operation, maintenance and replacement costs over time in order to ensure the effectiveness of the system for our agricultural needs.

The Pueblo, the Department of the Interior and the Army Corps of Engineers worked closely to develop mutually acceptable terms to amend the Wetfields Settlement Agreement to establish binding terms for the transfer of responsibility to the Pueblo and to release the United States from liability associated with the drainage system.

The relevant Federal agencies support the Pueblo's objectives and the amendment has been executed by all parties. In order to go into effect, however, Congress must endorse the amendment.

We thank Senators Udall and Heinrich for introducing this bill and we encourage this Committee to approve this legislation and clear the way for a vote by the entire Senate. The legislation has the support of the State of New Mexico, the bipartisan endorsement of the New Mexico congressional delegation, the backing of the relevant Federal agencies and the blessings of our neighboring Pueblos.

Thank you for your consideration. I am happy to answer any questions you may have.

[The prepared statement of Mr. Garcia follows:]

PREPARED STATEMENT OF HON. NICHOLAS GARCIA, GOVERNOR, PUEBLO DE COCHITI,
NEW MEXICO

Chairman Barrasso, Ranking Member Tester and Members of the Committee, on behalf of the Pueblo de Cochiti, I thank you for holding this hearing and providing us with the opportunity to discuss the Pueblo de Cochiti Self-Governance Act. This legislation reflects the positive evolution and healing process that follows a difficult history of cultural and economic harm to the Pueblo de Cochiti from the adverse impacts caused by the Cochiti Dam.

To fully understand the importance of this legislation to our people and the valuable objectives it achieves, you must first know a bit about Cochiti Pueblo and our experience with the Cochiti Dam.

The Pueblo de Cochiti is a federally recognized tribe of approximately 1500 members located in New Mexico approximately 50 miles north of Albuquerque. Our an-

cestors have resided in this area for more than a thousand years. We once occupied the lands that are now the site of the Bandelier National Monument.

The cultural life of the Pueblo revolves around our land. Our economy has historically been based on agriculture. Many of our rituals and ceremonies are tied to events in the agricultural calendar.

Congress authorized the construction of the Cochiti Dam in the Flood Control Act of 1960 and the Dam was completed in 1975. Built by the U.S. Army Corps of Engineers on Cochiti lands, the Dam is one of the largest earthen dams in the United States. Cochiti Dam and its surrounding waters occupy 11,000 acres of the Pueblo's ancestral land.

While those downstream have benefitted from the dam's protection from Rio Grande flooding as intended, the construction of the Dam imposed great hardship on our Pueblo. The whirlpool rock that is sacred to Cochiti and other Pueblos is within the Dam area. Despite promises from the engineers that the rock would not be affected by the Dam, it was one of the sites destroyed by the Dam, impeding our religious practices and those of our neighboring Pueblos. Additionally, for over two decades, groundwater seepage from under the Dam flooded Cochiti agricultural fields making them unusable, causing the Pueblo to cease farming more than a generation.

The seepage problem and the damage it caused was not corrected by the United States until our Pueblo brought a lawsuit, which was originally filed in 1980. Known as the Cochiti Wetfields litigation, the lawsuit was settled in 1990 when the United States agreed to build a drainage system to channel groundwater seepage from the Dam to points beyond our fields. The settlement also provided \$4.5 million for the operation and maintenance of that drainage system.

The Pueblo has administered, operated and maintained the Cochiti Dam drainage system for three decades pursuant to agreements under the Indian Self-Determination Act. Despite the loss of farming in our community for more than a generation, through an agricultural restoration program, fields are today productive and many of our members maintain a livelihood or supplement their income through cultivating traditional crops of beans, corn and squash as well as alfalfa and grains.

S. 2643 endorses the 2015 amendment of the Wetfields Settlement Agreement that the Pueblo, the Corps and BIA executed in order to accomplish three objectives:

- Promote Cochiti self-determination by transferring responsibility for the operation and maintenance of the Cochiti Dam drainage system to the Pueblo;
- Release the United States from any and all liability associated with the drainage system; and
- Expand the authorized uses of accumulated drainage system reserve funds for the acquisition of ancestral lands known as the Cariada de Cochiti (Cochiti Canyon).

This third objective reflects the development of an exceptional opportunity for the Pueblo to reacquire culturally significant ancestral homelands adjacent to the Cochiti Reservation at no expense to the United States, or any state or local government. The Pueblo's ancestral villages and numerous sacred sites are located in the Cariada de Cochiti. For 75 years, the Pueblo has sought to restore these historically and culturally significant lands to its reservation.

The land is owned by the State of New Mexico. Several years ago, the Las Conchas fire ravaged the area, destroying all productive activities on that land. The Pueblo entered into a lease agreement with the State with an option to acquire the parcel through a land exchange agreement. If the Pueblo purchases property of equivalent value for the State, the State will transfer its ownership of the Cañada to the Pueblo.

Our challenge, however, is obtaining funding needed to purchase lands of equivalent value for the exchange with the State. The Pueblo de Cochiti is not involved in gaming and has limited economic development programs. The Cañada de Cochiti was appraised at approximately \$5 million.

The Pueblo will be able to purchase real property of equivalent value only if it were authorized to utilize a portion of its accumulated reserve funds in the Cochiti Dam drainage system operations and maintenance fund. The amendment to the Wetfields Settlement Agreement executed in 2015 transfers to the Pueblo the authority and responsibility for the administration of that drainage system and will modify the purpose of that to include this acquisition of land.

The acquisition involves no controversy with other landowners or governments and will not be used for gaming purposes. The exchange will provide a direct benefit to the State of New Mexico because it will allow the State to acquire more produc-

tive, income-generating land. Meanwhile, the Pueblo will use the Cañada de Cochiti lands for cultural purposes.

The Pueblo has conducted an engineering and cost analysis of the drainage system's operation, maintenance and replacement costs over time in order to ensure the effectiveness of that system for our agricultural needs. The Pueblo, the Department of Interior and the Army Corps of Engineers worked closely to develop the mutually acceptable terms to amend the Wetfields Settlement Agreement to establish binding terms for the transfer of responsibility to the Pueblo and to release the United States from liability associated with the drainage system. The relevant federal agencies support the Pueblo's objectives and the amendment has been executed by all parties. In order to go into effect, however, Congress must endorse the amendment.

We thank Senators Udall and Heinrich for introducing this bill and we encourage this Committee to approve this legislation and clear the way for a vote by the entire Senate. The legislation has the support of the State of New Mexico, the bi-partisan endorsement of the New Mexico congressional delegation, the backing of the relevant federal agencies and the blessing of our neighboring Pueblos.

Thank you for your consideration. I am happy to answer any questions you may have.

The CHAIRMAN. Thank you very much for your testimony, Governor Garcia.

Now we will move to Judge Day.

STATEMENT OF HON. PAUL W. DAY, CHIEF JUDGE, LEECH LAKE BAND OF OJIBWE

Mr. DAY. Good afternoon, Mr. Chairman and members of the Committee.

I am going to be testifying this afternoon about S. 2055, the Tribal Healing to Wellness Courts Act. I want to let the Committee know right away that I support the bill and I have good reason based on ten years experience working with wellness courts at Leech Lake. We know they work.

I want to come back to that in just a minute but first, I want to talk about something else.

In order for the Leech Lake Band of Ojibwe, the Cass County governmental officials and the Itasca county governmental officials to have a wellness court in the first place, they had to first have a meeting of the minds.

They looked at all the statistics and all the problems associated with alcohol use and abuse, drug abuse, all the numbers in our part of the Country and concluded that what was the run of the mill way of handling these things was not working, so they decided to do something.

They created some memoranda of understanding and some joint agreements to work together to do things. As a result of that change in the change in the political climate there, they were able to start a wellness in Cass and Itasca Counties.

The first one started in 2006 and the second in 2007. We have had those two courts evaluated by an independent source and compared against the ten key components of a drug court and ten key guidelines of a DUI court, the work of the wellness court was matched against all of those factors.

In nearly every single factor that was evaluated, the wellness court participants did much better than those who do not go to wellness court. In other words, their recovery was sooner, longer, faster, their staying power was better, and their sentences were shorter.

One of the most important things is the ratio of money spent to money saved was there. In Cass County, the evaluation showed that for every dollar spent, there was \$1.13 in savings. Itasca County was even better. For every dollar spent, there was \$1.70 in savings.

When you project those numbers over a period of years, in poor counties like Cass County and Itasca County, those projected savings can add up to \$2 million. That is a huge impact. We know they work.

The important thing was in order for those wellness courts to get started, we had to have that political climate change. For any future wellness courts, that is a good starting place. That would be my recommendation.

Let me talk a bit about the wellness courts and give some examples of how this works. Many of the people in wellness court also have problems at home. Some have their children removed from them because of the dysfunction at home.

In wellness court, when a person is in recovery and rehabilitating, they are staying straight, sober and acting like they are supposed to and are able to do the things they need to do to reunite with their families so they can get their children back. That is one good and positive thing we see. It is always a great day in our courtroom when we can reunite family that way.

Another incident I recall is there was a young boy who was a juvenile and he was participating in a Cass County Court, Leech Lake diversion project. He was having trouble most of his juvenile life until he came to the diversion project. To make a long story short, the ceremony he went through gave him his spiritual name, his Indian name. That is all it took for that young boy because after that, he walked the straight and narrow.

It was not magic. It was the fact that his family did not have that resource in their background. Neither did his grandparents. Once we were able to step in and help him with that and get him on track, now he has turned his life around.

We have a young man who has been in and out of wellness court for a couple years. He is doing well now. He has had some relapses but he is doing well. As part of his recovery, he has learned how to run a sweat lodge.

The way you know a person is accepted in the community at Leech Lake regarding their spiritual endeavors is if people show up to participate. He has people showing up more and more every month when he has his monthly sweats.

We have a woman there who, if I may say, is elderly, with many spiritual gifts in teachings. But she has been on the sidelines for a number of years because of her addictions. She is now working with the youth and doing the teachings for those folks that she should have been doing all along. She is doing well in recovery.

I recall one other. We had a grandmother who was adopting her granddaughter because the bio-mom had passed away from drug abuse and what-not. We did a ceremony in court for her. We took out the pipe and did a traditional adoption ceremony.

We did that because the child welfare protection people said there needs to be something more than just a piece of paper from

court. We really need to have them experience this new relationship. That turned out well.

Those are the kinds of things I see over the years in wellness court. I definitely support the bill at this time.

I am glad to be here and I appreciate the invitation.

[The prepared statement of Mr. Day follows:]

PREPARED STATEMENT OF HON. PAUL W. DAY, CHIEF JUDGE, LEECH LAKE BAND OF OJIBWE

Good Afternoon Mr. Chairman and Members of the Committee. My name is Paul Day and I am the Chief Judge of the Leech Lake Band of Ojibwe Tribal Court in Cass Lake, Minnesota.

I have served in this position since December of 2012 and have prior experience as an Assistant U.S. Attorney for the District of Minnesota and as the Executive Director of the Anishinabe Legal Services, a program which provides legal services to low-income residents at the Leech Lake, White Earth and Red Lake reservations.

I want to thank you for holding this hearing to discuss a number of important pieces of legislation which are being considered before this body and which are of great importance to Indian Country. Given my experiences, I would like to focus my testimony on S. 2205, the Tribal Healing to Wellness Courts Act of 2015 and thank Senators Tester and Franken for its introduction.

After reviewing the goals of the legislation and reflecting on my personal experiences, I firmly believe there is a very significant need for programs this bill is seeking to support. And that its enactment and funding would provide significant health and wellness benefits to tribal communities around the nation.

Like many communities, Leech Lake has been a victim to substance abuse over the years. According to the Indian Health Service at HHS, Native Americans are five times more likely to die from alcohol related causes than those who are not. As you can imagine, this has been a serious problem and has had a severe impact to our community.

With this said however, I am pleased to report that we had some success in partnering with local communities to establish wellness courts in our area. In our region, the elected officials of the Leech Lake Band of Ojibwe and the counties of Cass and Itasca have joined hands to see what they can do to make life better for their citizens. The wellness courts created through cooperative agreements are just one example of the success created when governments work together.

Through these courts, we have seen positive results as we work together to combat this combat this epidemic in our community and provide assistance to those who hope to recover. I'd like to take a moment to discuss a few of the benefits of wellness courts that I have seen during my time as the Chief Judge.

As a Public Law 280 state, Minnesota has jurisdiction over criminal matters on most Indian reservations. The counties could simply continue to do business as usual and jail offenders (many of whom are Indian) for alcohol related offenses. However, the cost of incarcerating offenders and the high recidivism rates for alcohol and drug offenders require a different approach.

In our area we thought and it has proven correct, that a wellness court for Indians and non-Indians that followed the best practices standards would help address these issues.

As a result we have seen positive results for the participants in wellness court and a cost-benefit to the taxpayers. Those who participate in our wellness courts have a lower recidivism rate and perform better in an almost all categories than those who do not.

Further and importantly, for every dollar invested in the Leech Lake/Cass County wellness court, the taxpayers receive \$1.13 in return, while the return on every dollar is \$1.70 in the Leech Lake/Itasca County wellness court. Wellness courts, in my opinion, are a very effective use of taxpayer funding.

In brief, the wellness courts have been a great success for the Leech Lake Band of Ojibwe and our county partners and could not have happened without excellent government-to-government relationships. These courts have contributed greatly to positive relationships in the region and have helped break down old barriers that were propped up by ignorance and prejudice.

Although we have had measurable success and outcomes, Tribal wellness courts face unique challenges that are not usually encountered in a state drug court system. And I believe there are many ways that this system could be improved—some of which are addressed as a part of S. 2205.

Of specific note, the Leech Lake/Cass County wellness court team needs a member from the public defenders' office to help assure that policy decisions made by the team protect the due process rights of the participants. Unfortunately, the public defenders cannot continue working on a case once the case has been litigated or otherwise resolved.

Thus, the Leech Lake tribal court, like many tribal courts across the country, need additional funding to hire judges and other staff. While wellness courts have a positive impact in Indian country, there is a cost associated for this service, mainly the cost of staff.

Although there have been challenges to work through in the wellness court system, I believe wellness courts adapt to meet the needs of each community by establishing more structure and accountability of offenders. There is no question in my mind that tribal wellness courts have had a positive and encouraging impact to communities in Indian Country and specifically in Leech Lake.

S. 2205 would continue to help improve wellness courts and provide the added tools needed to be successful.

This bill would also integrate the administration of other services that are essential to the success of those being treated including: mandatory periodic testing for each participant for the use of controlled substances, as well as provide substance abuse treatment for each participant, relapse prevention, health care, education, vocational training, job placement, housing placement, and child care or other family support services.

In conclusion on behalf of myself and like-minded individuals in Indian Country, I appreciate the work committee members, bill authors, and staff have done to raise awareness and seek out additional resources to address this important issue. Thank you for the opportunity to testify today.

The CHAIRMAN. Thank you very much, Judge Day. We appreciate your time with us today.

I will now turn to Dr. Ahumada.

STATEMENT OF MARTIN M. AHUMADA, INTERIM PRESIDENT, DINE COLLEGE

Dr. AHUMADA. Good afternoon, Chairman Barrasso, Vice Chairman Tester and distinguished members of the Committee.

My name is Martin M. Ahumada. Since October 15, I have been serving as the Interim President of Diné College, America's first tribal institution of higher learning.

I appreciate the opportunity to provide testimony on the far reaching purpose of the Diné College Act of 2016. I want to thank Senators Flake, McCain, Udall and Heinrich for supporting S. 2564 related to this Act.

This bill will uphold the treaty of 1868 between the United States and the Navajo people. Passage of the bill will ensure that the Navajo Nation and its people will have the right to self determination, improve the economic and social well being of the Navajo Nation through higher education and maintain the strength and distinct institutions of higher education that teach Navajo language, culture, traditions and history.

Diné College employs approximately 300 professionals and serves 1,700 students across a vast 26,000 square miles of Navajo land spanning the States of Arizona, New Mexico and Utah. For many Navajo students exploring higher education opportunities, Diné is the only financially viable option, costing a full-time student only \$660 per semester or \$55 per student credit hour.

Diné College is fulfilling its nation-building mission through key academic programs, community services and research initiatives that meet the economic, political, environmental and social development needs of the Navajo Nation. We are doing this by enhancing

a Bachelor's program in Business Administration which prepares students to foster and manage the economic growth of their communities; by creating new Bachelor degree programs for the fall of 2018 in Biology, Psychology, Secondary Math Education, Secondary Science Education and Indigenous Public Health; and by cultivating the creation of new businesses and jobs in areas central to the Navajo way of life such as farming, livestock management, natural resources and the arts.

We urge your support of the Diné College Act of 2016 to significantly expand and renovate facilities and to recruit and retain quality faculty and other key personnel. This will enable us to meet five critical needs. The first is to address the serious shortage of adequate instructional classrooms, safe laboratories, faculty offices and student housing.

A recent GAO report highlighted the lack of health and safety inspections in BIE schools. We confront comparable challenges with our own campus facilities. For example, the historic Hatathlie building currently houses 11 classrooms serving a group of 300 students and faculty on any given day.

At seven stories tall, it makes it the tallest building on the Navajo Nation. This building is structurally unsound and will require over \$22 million to restore. A comparable amount of funding is needed now for a new building to relocate everyone.

A second critical need is to recruit and retain high quality faculty by offering them housing as a key employment benefit. A third critical need is to meet head on the great need for college preparatory education, known as remedial education by many, in the Navajo Nation which will be a high yield social and economic investment in the Navajo people. This investment will mitigate unemployment and social detachment.

Fourth, a critical need will be to provide education, research and community services that will combat crime and teen suicide, alcohol and drug abuse and diabetes.

Fifth is to enable the youth of the Navajo Nation to learn and embrace the beautiful Navajo language and culture which are essential to developing positive self identity that will lead to success and pursuing further studies and forging new and successful careers.

Your endorsement of this bill will enable us to both maintain and improve our programs and services and to serve as a world class model for innovation, for the preservation of language and culture and for overall nation building.

We embrace the responsibility to be this model for indigenous colleges and universities across the United States and throughout the world. Passage of this act would both recognize Diné College as a symbol of Indian self determination and honor the birth of the TCU movement.

On behalf of all the citizens of the Navajo Nation, I ask for your unwavering support for the Diné College Act of 2016.

On this very day of April 13, in 1971 at 10 a.m. in the morning, the sacred planting of our college took place in which the grounds were anointed with songs and prayers. It is befitting that I am here in Washington, D.C. this day advocating for the college on such a historic day.

Thank you for this opportunity to speak with you on such a sacred for us.

[The prepared statement of Mr. Ahumada follows:]

PREPARED STATEMENT OF MARTIN M. AHUMADA, INTERIM PRESIDENT, DINÉ COLLEGE

Introduction

Good afternoon Chairman Barrasso, Vice Chairman Tester, and distinguished members of the Senate Committee on Indian Affairs. I appreciate the opportunity to me to testify on the *Diné College Act of 2016*. This unique piece of legislation on Indian higher education is rooted in the historic Treaty of 1868 between the United States of America and the Navajo Indian Tribe which provided funding for the education of the citizens of the Navajo Nation. The far-reaching purpose of the *Diné College Act of 2016* is to honor the federal government's treaty obligations by ensuring that the Navajo Nation and its people have the right to self-determination; can maintain and strengthen distinct institutions of higher education that teach Navajo language, culture, traditions, and history; and can improve the economic and social conditions of the Navajo Nation and its people through higher education.

My name is Dr. Martón Miguel Ahumada. I have had the privilege of serving as the Interim President of Diné College since October 2015. I find it a special honor to have this chance to address the Senate Committee on Indian Affairs regarding the *Diné College Act of 2016* to benefit the very first tribal institution of higher learning established in the United States. This landmark institution is widely embraced-and vitally needed-as a role model for other Indigenous collegiate institutions across the United States and in other countries of the world. It is an honor to champion the *Diné College Act of 2016* which hopefully can open doors and positively impact similar indigenous institutions.

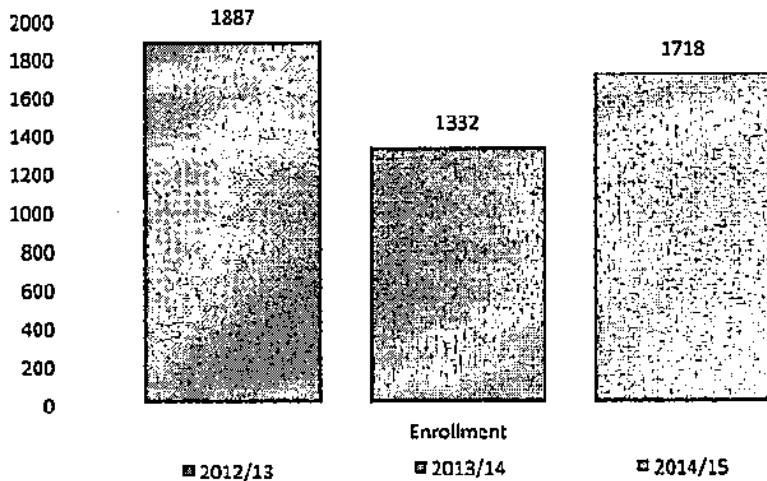
In my career in higher education, which spans more than 35 years, I have worked with university and higher education ministries in different countries, with premier national and state commissions of higher education in the United States, with leading public and private universities, and with several U.S. federal agencies.

On behalf of all the citizens of the Navajo Nation-and to honor our federal government's historic 1868 treaty with the Navajo People-I ask for your unwavering support for the *Diné College Act of 2016*. I applaud Senator Flake's sponsorship of Senate Bill 2564, which will modernize prior legislation for Diné College by providing (1) annual funding for the ongoing "operation and maintenance" of Diné College; (2) construction grants to Diné College in the amount of \$2,000,000 for each fiscal year from 2017 through 2020; and (3) direct the Secretary of the Interior to submit to the appropriate Congressional committees a report on the results of a detailed survey and study of all capital projects and facility needs of Diné College.

Significance of the Diné College Act of 2016

The *Diné College Act of 2016* will enable this landmark institution to continue providing outstanding higher education services to the Navajo people-and to continue serving as a model and mentor for Indigenous institutions of higher education throughout the United States and in other countries. As the first tribally-controlled and accredited collegiate institution in the United States, Diné College serves a predominantly Navajo student population across the 26,000 square miles of the Navajo Nation-spanning the states of Arizona, New Mexico, and Utah. Our main campus is located in Tsaile, Arizona, a branch campus in Shiprock, New Mexico, and four regional sites located in both of these states. For many students living on the Navajo Nation exploring post secondary opportunities, Diné College is the closest and most affordable option. It is not uncommon for our students to drive 50 miles each way to attend classes. Despite the long distances, our enrollment numbers are increasing. Last academic year (AY14–15), our enrollment reached over 1,700 students and it is anticipated that next year's enrollment will near the 1,900 as we experienced three years ago (AY12–13). Below is a three-year enrollment trend chart.

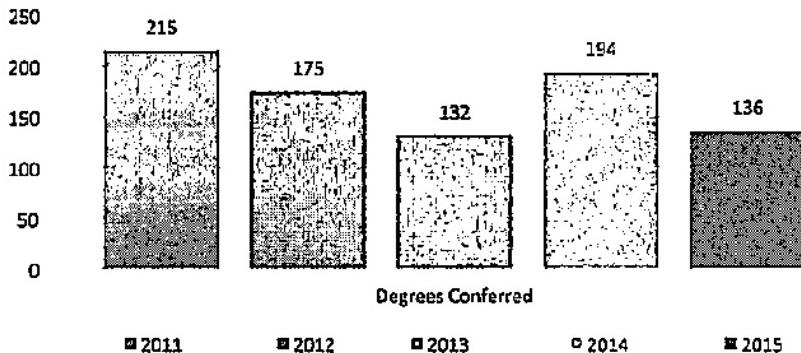
Enrollment Trend



Diné College was featured in the 2015's Best and Worst Community Colleges, an online study by WalletHub, <https://wallethub.com/edu/best-worst-community-colleges/15076/>. WalletHub compared 670 community college institutions across the nation in four key measurements that includes Cost and Finance, Classroom Experience, Education Outcomes, and Career Outcomes. Diné College ranked number one in the Cost and Finance area among the community colleges in the United States for providing \$55.00 per credit hour, the lowest per credit hour tuition making Diné College an affordable choice. In the Career Outcomes, Diné College also ranked number one for graduating students with great jobs and leaving without student debt. Diné College, like most tribal colleges and universities, provides tribal members with a feasible opportunity for a meaningful, well paying career.

Diné College offers General Education courses that provide students with a high-quality experience while earning Certificate as well as Associate and Bachelor degrees. Diné College has been strengthening its first two Bachelor of Arts programs, the first of which is in Business Administration and prepares students for positions in Tribal Management and Economic Development. The other program is in Elementary Education and prepares teachers who can develop Navajo Children's academic skills and cultural identities in both English and Navajo.

Diné College is in the midst of establishing new bachelor's degree programs in Biology, Psychology, Secondary Math Education, and Secondary Science Education. It is also laying the groundwork for both a bachelor's degree program-and ultimately a master's degree program-in the increasingly important field of Indigenous Public Health.



Equally important, Diné College is designing and implementing multiple nation-building initiatives with an eye on creating new businesses and jobs in areas central to the Navajo way of life, including farming, livestock, natural resources, and the arts. By molding our institution to needs of the Navajo Nation, several unique programs have been created such as the Diné Environmental Institute, the Diné Policy Institute, the Diné College Dual Credit Program, the Diné College Radio Station (KXWR 92.1 FM), and the Navajo Language Academy, just to name a few.

Diné College not only prepares students for the workforce but also generates solid career opportunities in academia. Diné College employs over 300 qualified personnel who genuinely care about the success of our Navajo students. The faculty and staff of Diné College have established an environment of encouragement and growth at Dine College.

Recommendations

Mr. Chairman and distinguished members of the Senate Committee on Indian Affairs, in order to advance the work the work of the Navajo Nation through Dine College, we request your support of the *Diné College Act of 2016* to modernize all prior federal legislation relating to Diné College.

We recommend that: (1) funding be authorized and appropriated to meet Diné College's annual resource requirements for basic "operations and maintenance," (2) construction grants be approved for Diné College in the amount of \$2,000,000 for each fiscal year from 2017 through 2020 (3) a directive be given to the Secretary of the Interior to submit to the appropriate committee of Congress a report on the results of a detailed survey and study of all capital projects and facility needs of Diné College; and (4) adequate funding is provided to the Secretary of the Interior to conduct the detailed survey and study of all capital projects and facility needs of Diné College.

To date, funding for the construction grants and facilities study have never been appropriated.

Prerequisite inventories were submitted to the Bureau of Indian Affairs by Diné College in 1979, 1988, and 1996, but no action was taken. Subsequent to April 2014, the College held several meetings with the Bureau of Indian Affairs, wherein consensus was achieved on the vital need to initiate a facilities study. Diné College maintains over 580,000 square feet of building space across six different academic sites.

Collectively, tribal leaders and members of Congress of the past four decades recognized the significance and important of a higher education institution within the boundaries of the Navajo Nation. With the anticipated increase in future enrollment, we can no longer wait to update and enhance Diné College.

In closing, I urge your support of the *Dine College of 2016 Act*. With the passage of the Dine College Act of 2016, we will be enabled to continue fulfilling the noble goal of continuously improving our programs and services to make Diné College an exemplary higher education institution for the Diné People. We urge Congress to take this step forward to help fulfill the goals of the Treaty of 1868, and use this step forward as a model for other indigenous institutions.

The CHAIRMAN. Thank you very much, Dr. Ahumada.
I will turn now to Ms. Julie Roberts-Hyslop.

**STATEMENT OF JULIE ROBERTS-HYSLOP, VICE CHAIR,
TANANA TRIBAL COUNCIL; ACCOMPANIED BY: ROBERT
CLARK, PRESIDENT/CEO, BRISTOL BAY AREA HEALTH
CORPORATION**

Ms. ROBERTS-HYSLOP. Honorable Senators, it is really an honor to be here today to testify on behalf of my village of Tanana, Alaska. It is located in the interior of Alaska.

My name is Julie Roberts-Hyslop. I currently serve as the Vice Chair of our tribe and also, I am a tribal member.

I am pleased to be here today in support of S. 2421, a bill sponsored by Senators Murkowski and Sullivan. I thank you for holding this important hearing to help expedite this passage.

S. 2421 would require the transfer by warranty deed title to 11.25 acres of land that housed the hold hospital compound, a Native hospital that took care of all the people from all over Alaska for many years until it was demolished in the early 1980s.

Our plan in Tanana is to build a community wellness center. Because we lack clear title today to the land that it sits on where we want to house our wellness center, we are unable to begin the planning and construction of such a needed wellness center in our region.

Tanana first needs the Indian Health Service to transfer by warranty deed title to this parcel of land. My written testimony goes into more detail regarding this transfer.

S. 2421 will assure that the Native village of Tanana receives a title via warranty deed. A warranty deed would supersede a quit claim deed which IHS is currently preparing for this transfer. A warranty deed also supersedes any revisionary interest that would be imposed by a quit claim deed.

S. 2421 also contains language that would insulate the tribe from liability for environmental contaminations that occurred on the land prior to the transfer. We have been cleaning up this particular piece of land through a contract with the Indian Health Service.

We respectfully ask Congress to expedite consideration of this bill for passage before the end of this session of Congress.

Thank you. I would be happy to answer any questions you have.
[The prepared statement of Ms. Roberts-Hyslop follows:]

PREPARED STATEMENT OF JULIE ROBERTS-HYSLOP, VICE CHAIR, TANANA TRIBAL COUNCIL

My name is Julie Roberts-Hyslop and I am the Vice Chair of the Tanana Tribal Council. I am pleased to testify before this Committee on behalf of the Tribe. We appreciate the opportunity to submit testimony that strongly supports the passage of Senate Bill 2421, as introduced by Senators Murkowski and Sullivan. We would also like to thank the senators for their support of House companion bill, H.R. 4289. This land transfer will allow the Tribe to advance its economic development plan to include this parcel of land that is located in the center of our community.

The Tanana Tribal Council is the governing body to 1,460 tribal members and the village of Tanana is a predominantly Alaska Native rural community that is only accessible by plane or boat. Senate Bill 2421 would require the Secretary of Health and Human Services to transfer Indian Health Service (IHS) property to the Tribe via warranty deed. The land transfer is essential to facilitating the future construction of a new community wellness clinic.

Under the Self-Governance provisions of the Indian Self-Determination and Education Assistance Act (ISDEAA),¹ the Tanana Tribal Council has successfully worked with Tanana Chiefs Conference in carrying out a broad range of health programs in Tanana, Alaska. The ISDEAA and the Tribe's agreements with the IHS give the Tribe the right to acquire fee title to all federal property that the Tribe uses to provide health services to its tribal members. The IHS has been supportive and continues to work closely with Tanana on the land transfer.

The parcel of land that the Tribe is requesting to have IHS transfer is the site of a former IHS hospital that has since been removed. The original plot of land encompassed 20.56 acres. Under the Alaska Native Land Claims Settlement (ANCSA),² 9.31 acres was transferred to Tozitna, Tanana's ANCSA Village Corporation. The Tribe has requested transfer of the remaining 11.25 acres.

IHS has begun work on transferring the parcel by quitclaim deed, however Senate Bill 2421 would expedite the transfer without the need for a quitclaim deed. While a quitclaim deed would transfer the grantor's interest in the property, it would not guarantee that the title is valid and would include prohibitive terms and conditions that would act as an obstacle to mortgaging, leasing, or otherwise transferring any interest in the property or making major changes or capital improvements to the property without first gaining permission from the IHS even when the Tribe uses its own funds for a project.

As such, the Tribe would not benefit from a quitclaim deed in the same way it would benefit from a warranty deed. In fact, the quitclaim deed would deprive the Tribe of unencumbered and autonomous land ownership rights because property transferred under quitclaim would be treated as if it continued to be federally owned, allowing the IHS to have control over the Tribe's use of its property. Further, any breach of the covenants running with the land would result in an immediate reversion of title back to the government agency. A warranty deed would instead provide the Tribe with greater security in title as well as flexibility in how the property is used to carry out health service programs for our tribal members and in our efforts to leverage funding.

Senate Bill 2421 at Section 2 requires the Secretary of Health and Human Services to transfer the parcel of land to the Tribe by warranty deed within 180 days of enactment. In addition, the conveyance of the property by warranty deed shall not: (1) require any consideration from the Tanana for the property; (2) impose any obligation, terms, or condition on Tanana; and (3) allow any reversionary interest of the United States in the property. The legislation also provides language to shield Tanana against any and all liability under Federal or State law for mitigation or other remedial action necessary by the presence of environmental contamination or hazards, including hazardous petroleum-related substances. The Secretary will retain any and all liability for environmental contamination in existence on the property prior to title transfer to Tanana. The bill includes language that provides the Secretary an easement to access the property as reasonably necessary to satisfy any retained obligation or liability. The Secretary must comply with the notice of hazardous substance activity and warranty requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

We thank the Committee for holding a hearing on this important legislation to transfer via warranty deed 11.25 acres of land to the Native Village of Tanana. Consistent with federal policy and principles of self-governance, enactment of S. 2421 will enable our Tribe to exercise full ownership rights in the transferred property. We respectfully ask Congress to advance S. 2421 as soon as possible to accommodate a shorter session of Congress due to the election year. Thank you.

Ms. ROBERTS-HYSLOP. I would like to yield any of my time to Robert Clark of the Bristol Bay Health Corporation to testify if possible.

The CHAIRMAN. That would be quite all right. Sir?

¹ Indian Self-Determination and Education Assistance Act, Pub. L. 93-638 (1975).

² Alaska Native Claims Act (ANCSA), 43 U.S.C. 1601 (1971)

STATEMENT OF ROBERT J. CLARK, PRESIDENT/CEO, BRISTOL BAY AREA HEALTH CORPORATION

Mr. CLARK. Thank you. You have my testimony.

I might just add that what is different is I have a quit claim deed and I would like to go to a warranty deed, something that is more permanent.

I have a building put up that should be occupied by October. In Alaska, you need to get everything covered up. Otherwise, you cannot do much work in the winter months. We are waiting for a first barge which should be showing up shortly.

By having a warranty deed, we can have access to foundations, State dollars and private dollars. We have the Rasmuson Foundation willing to provide the furnishings for the clinic that again saves the government money and allows for a lot of leveraging and things like that which is part of what we believe 638 is all about.

We were one of the first organizations in the State or Nation, I guess, to take over a total service unit. We have continued that operation since 1980.

We were formed in 1973. We have been a successful organization and believe that this simply helps the process, helps us and allows us to provide better care for all our people.

I stand for any questions and I agree with all the comments made by Julie.

[The prepared statement of Mr. Clark follows:]

PREPARED STATEMENT OF ROBERT J. CLARK, PRESIDENT/CEO, BRISTOL BAY AREA HEALTH CORPORATION

The Bristol Bay Area Health Corporation (BBAHC) is pleased to submit this testimony in support of S. 2421, legislation introduced by Senators Murkowski and Sullivan which would require the Secretary of Health and Human Services to transfer certain Indian Health Service (IHS) property to BBAHC by warranty deed. The property is critically important to BBAHC's construction and operation of a new free-standing dental clinic. The BBAHC is in the process of constructing a new, modern, up-to-date facility that will be available later this year to provide significantly more dental services to BBAHC's 8,000 member service population. We note that Representative Don Young has introduced a companion bill, H.R. 4289, and we thank our entire delegation for their support on this matter. Both bills also include a warranty deed transfer provision for the Tanana Tribal Council.

BBAHC has for many years carried out a comprehensive health care delivery program at the federally owned Kanakanak Hospital compound in Dillingham. BBAHC has done so on behalf of its member villages in accordance with the Alaska Tribal Health Compact and Funding Agreements with the IHS under the Indian Self-Determination and Education Assistance Act (ISDEAA). These services include dental care.

The ISDEAA and BBAHC's agreements with the IHS give BBAHC the right to acquire fee title to all federal property that BBAHC uses to provide these health services. BBAHC requested that IHS transfer legal title to a 1.474 acre parcel of land within the Kanakanak Hospital compound so that BBAHC could use non-IHS funds to construct a new, larger dental facility on the transferred parcel. While the IHS agreed to the transfer, IHS treated the transfer as a discretionary donation of excess property under the Federal Property and Administrative Services Act (FPASA) and GSA regulations. Using FPASA and GSA rules allows the IHS to transfer the property by quitclaim deed and include whatever terms and conditions IHS wants in the deed.

The BBAHC reluctantly accepted the IHS quitclaim deed transferring title to the property in order not to miss last year's construction season. However, the quitclaim deed includes extensive terms and conditions that give IHS the right to approve mortgaging, encumbering, leasing, or otherwise transferring any interest in the property, or making major changes or capital improvements in the property. Any breach of these terms and conditions, such as not getting IHS permission for mak-

ing changes in the property, triggers an immediate right of entry and reversion of title back to the IHS. These terms and conditions are characterized in the deed as covenants running with the land. Thus, for example, if BBAHC were to approach a bank for a construction or improvement loan, and as a consequence would have to enter into a deed of trust to secure the loan, IHS must give its permission. Even if BBAHC were to use its own funds or other third party funds, the quitclaim deed requires IHS permission for any major change or improvement in the property.

IHS justifies its position by claiming that all transfers of federal property to ISDEAA contractors and compactors must be made under the FPASA and GSA rules. This position, however, is contrary to the GSA regulations at 41 C.F.R. § 102–75.110, exempting transfers of real property from the FPASA and GSA rules if the transfer is authorized by a special statute that directs or requires an Executive agency to transfer or convey title to specifically described real property in accordance with the provisions of the statute.

The ISDEAA is such a special statute. Sections 105(f) and 512(c) of the ISDEAA provide that the Secretary may donate excess property to Indian tribes and tribal organizations, “except that” title to real property furnished by the Federal Government for use in the performance of an ISDEAA agreement shall, unless requested otherwise, vest in the appropriate tribe or tribal organization. Thus, the ISDEAA requires the transfer of this specifically described property by vesting title in tribes and tribal organizations and specifically making this vesting of title an exception to the donation of excess property under GSA rules. S. 2421 is necessary to overcome IHS’ insistence that these transfers be treated as discretionary donations of excess property under the FPASA and GSA rules.

S. 2421 at Section 2 requires the Secretary of Health and Human Services to transfer the property for the new dental facility to BBAHC by warranty deed within 180 days of enactment. The transfer by warranty deed will supersede and render of no future effect the previous quitclaim to the property. Further, the conveyance of the property by warranty deed shall not: (1) require any consideration from the BBAHC for the property; (2) impose any obligation, terms, or condition on the BBAHC; and (3) allow any reversionary interest of the United States in the property. S. 2421 also includes language to protect BBAHC against any and all liability under Federal or State law for clean-up or other remedial action occasioned by the presence of environmental contamination or hazards, including petroleum-related hazardous substances.

The Secretary will retain any and all liability for environmental contamination in existence on the property prior to the transfer of title to BBAHC. Language is included to provide the Secretary with and easement and access to the property as reasonably necessary to satisfy any retained obligation or liability of the Secretary. Finally, the Secretary must comply with the notice of hazardous substance activity and warranty requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

There is precedent for S. 2421. Public Law 114–56, enacted on September 30, 2015, requires the transfer of certain property to the Yukon Kuskokwim Health Corporation using virtually the same language as S. 2421 except for the description of the property to be transferred. In addition, Congress has enacted property transfers via warranty deed from IHS to the Maniilaq Association (PL 112–263) and the Alaska Native Tribal Health Consortium (P.L. 113–68).

We thank you for scheduling a hearing on this legislation to transfer via warranty deed the 1.474 acre parcel of land site of our dental clinic. We urge that action be expedited on this bill, as the clock is ticking on this election year shortened session of Congress.

The CHAIRMAN. Thank you very much.

I was curious, you talked about the first barge. I was up in Bethel a couple of weeks ago. Senators Murkowski, Cantwell and a bipartisan group were there. It did not seem like things were ready for the first barge to come in. When does it often happen?

Mr. CLARK. For three years now, we have not had any real winters. You have had more snow and winter than we have had. Something is drastically wrong with the atmosphere. The Earth is hurting. We are very nervous.

The front of my property is the river and it has been running about three to six feet a year. In 50 years or so, we will be down

on the bank unless we get that shored up. By now, I should have lots of ice still in the river. The ice is gone.

I went to Anchorage for a meeting for a week and I came back and it was like summer. What is going on here? It has been really strange for several years. We get things in the fall and we get it in the winter because you cannot fly stuff in. It is just too expensive.

The CHAIRMAN. I just noticed gasoline was over \$5 a gallon.

Mr. CLARK. Yes.

The CHAIRMAN. Thank you for being here.

Senator Udall?

Senator UDALL. Thank you, Mr. Chairman.

First of all, let me thank Director Black for your testimony on both of the bills that impact New Mexico and Arizona. We really appreciate the Bureau of Indian Affairs working with us on these pieces of legislation.

Governor Garcia, I have a couple questions for you. I know you and others in the Pueblo government over the years have worked very hard to get to this point in terms of having success here. I want to commend the Pueblo's work. I thought you and the leadership worked very hard to help pull people together and get this done.

Can you please explain a bit more how you reached agreement with the Corps of Engineers, how important it is for this Committee to act on this piece of legislation, and how long it is you have been waiting for this to happen, Governor Suina?

Mr. SUINA. First of all, the Corps of Engineers and the Pueblo have been working together quite nicely for the last few years. It has never been a problem with them, first of all, because the Corps really is concerned on the other side of the dam mostly but it is something that is fully supported by the Corps of Engineers. It has taken quite a while for us.

As the Governor testified, it has been about 75 years this has been coming. Everything seemed to come together and with support from the Corps of Engineers and the Bureau of Indian Affairs, and even the State of New Mexico, I think we are in fine shape for this to happen.

Senator UDALL. Thank you very much. I know you were the former governor there and worked on this issue as well as Governor Garcia and many of the governors over the last 75 years worked very hard on this.

We appreciate the fact that you have worked with everybody and worked through the issues. Thank you for that.

I am going to ask the next question of the interim President of Diné College.

Dr. Ahumada, the college includes for facility construction. Can you explain to the Committee why this funding is important and talk a bit about the current state of the campus facilities?

Dr. AHUMADA. Absolutely, and thank you for the question.

As a 45 year old institution, we have many buildings that are outdated. We have been doing a very good job over the last 20 years of developing our capacities, our facilities and renovating the buildings but we have not been able to keep up.

We do have I would say about 25 percent, at least a fourth of the facility needs, unmet. The funding for facilities will go primarily for classrooms. We need to expand our science labs and a number of our science classes in particular.

We need to expand our facilities and other sites out to the city of Wind Rock. That is where the primary need is and where we would be allocating the new funds.

Senator UDALL. Thank you for that answer.

Diné College has been very successful in offering high quality education in many areas. I think this helps form future Navajo teachers, leaders and others who will play an important role on the Navajo Nation.

My understanding is that you are planning to establish some new programs. I was wondering if you could tell the Committee a bit about what would be a new Bachelor's degree and possibly a Master's degree in Indigenous Public Health.

Dr. AHUMADA. Absolutely.

We are developing new baccalaureate degree programs, as we said, in Biology, Math Education, Science Education, and Psychology which is really big with our substance abuse interest to address that, and to work with our criminal development program.

We also are working very hard to expand our Associate Degree in Public Health to not only a baccalaureate degree program but also a Master's degree in Indigenous Public Health. We have been working very closely with the University of Arizona, one of the leaders in the Country, on this for some time.

We would have a program that would be of value throughout the United States and globally. We want to make sure that we meet the needs of the Navajo Nation in this area. We have made tremendous progress. We will negotiate an MOU with the university very soon in this area. Those are the main thrusts academically.

Senator UDALL. Thank you so much for your hard work at Diné College.

Dr. AHUMADA. Thank you.

Senator UDALL. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Udall.

Senator Franken?

Senator FRANKEN. Thank you, Mr. Chairman.

Judge Day, thank you again for coming to testify today and enlighten the Committee on the importance of tribal healing and wellness courts.

As you discussed in your testimony, the wellness court uses traditional Indian ceremonies and other cultural activities to help people in recovery from drug and alcohol addiction. The program uses the unique culture of each band, of each tribe and promotes community cooperation.

Can you talk, Judge Day, to the impact of using cultural ceremonies and activities on the recidivism rate and the rates of recovery? Can you share specific examples of individuals from Leech Lake?

Mr. DAY. Thank you, Senator. I will try.

The answer is simple but not simple. The Anishinaabe people were given their way of life by the Creator. In order to live that

life, which is to basically be a healthy person, there are certain things you have to do in certain times of your life.

In the wellness court, we find oftentimes those participants have not had any of those milestones in their lives. When we introduce them to that particular part of their existence, then you see, not 100 percent of the time, but you often see that blossoming or blooming of that part of them that has been dormant come to life, come to the forefront.

It does something that I cannot cite you to a book to read about but it blossoms in them and pulls something from them that just shows they now are feeling the strength of being a real person. I am now fully a human being and I am worth something.

It gives them self esteem to go through the ceremonial steps they are supposed to go through in their lives. It is as simple as that but it is also complicated too.

Senator FRANKEN. I understand.

In any 12-step program, there is a spiritual awakening. I believe there has been cultural trauma among Native people. They have had their culture taken away from them. As you say, the culture is so tied to the spirituality, it is no accident that of course a culturally sensitive program makes a tremendous amount of sense.

Have you done data on recidivism?

Mr. DAY. We do have data and the two evaluations I talked about contains a lot of that information. I do not have exact numbers here in front of me but I do know those participants in wellness court have a better rate on the recidivism scale. They do not reoffend as often or as quickly and the results are better in just about all the categories measured in the ten most important key components.

Senator FRANKEN. Could we get the data you have from that?

Mr. DAY. Yes, you can.

Senator FRANKEN. I think that would be helpful.

I just want to applaud you for what you do. Obviously we have a large addiction problem in our Native lands. This approach, to me, provides a tremendous amount of hope. Hope is fear that has said its prayers.

Thank you.

The CHAIRMAN. Thank you, Senator Franken.

Senator Tester?

Senator TESTER. Thank you, Mr. Chairman.

First of all, thank you all for your testimony. We appreciate it very much.

Mr. Black, have you done an analysis of how many high hazard dams you have in Indian Country or that we have in Indian Country?

Mr. BLACK. Yes, sir. I believe the number is somewhere around 137 high to significant hazard dams in our inventory.

Senator TESTER. How many of those are below par that have high potential for failure? They all have potential for failure but some are higher than others.

Mr. BLACK. I do not have those numbers with me, but we do have a condition assessment report.

I did want to clarify the high hazard and significant hazard dam classification is not necessarily a classification of the condition of

the dam but the potential, if the dam were to fail, of what could happen.

Senator TESTER. I get you. The question I am asking then, with all the semantics aside, is how many dams of that 137 are in poor enough shape that they have a fair chance of failure?

Mr. BLACK. That, I do not have with me.

Senator TESTER. Have you done an assessment of that, is the question.

Mr. BLACK. We do have condition assessments. We are also undergoing right now a ten year process where we are going out and inspecting all of our dams and doing a thorough assessment of all of them.

Senator TESTER. The reason I want to explore this line of questioning is, when I was in the State legislature, there were a lot of high hazard dams. You are right, it is a categorization but there are also a lot of high hazard dams that have a high potential of failure with the potential loss of property and even human life.

The question I have is where does dam safety and maintenance fall among the department's priorities for Indian Country? You have a lot of priorities so I do not expect it to be number one but it might be. Where does it fall?

Mr. BLACK. I do not know if I could put on a scale where it stands. As you mentioned, we have so many priorities in Indian Country that trying to weigh one against the other sometimes gets to be extremely difficult. Any time that we are dealing with safety and something as critical as dams, it ranks very high in our eyes.

Senator TESTER. You mentioned that it should be a part of the discretionary budget because then you can do consultation with Indian tribes and shuffle money where it needs to go to do the most good. I do not want to put words in your mouth. Is that fairly correct?

Mr. BLACK. I think that is fair, yes.

Senator TESTER. You have 137 dams. You get me the figure on how many have a reasonably high chance of failure. If this is not near the top or maybe I should word this differently. Why is not the department taking care of the dams already? Is it because you do not have enough money or there are other things of higher priority? Just be honest with me.

Let me put it this way. If you do not have enough money to deal with the dam issue, it is very unfair for us to stand up here and hammer you on dams that are ready to fail. Where are we? We are in the middle of a budget process and appropriations. That is not this Committee but it is the one Senator Udall is the Ranking Member on. Where are we?

Mr. BLACK. As I mentioned in our testimony, we did request an additional \$2 million in fiscal year 2017.

Senator TESTER. Is that in the President's budget?

Mr. BLACK. Yes, it is in the President's budget.

Senator TESTER. That would be adequate to address the problem?

Mr. BLACK. No. Honestly, it would not. With the \$500 million backlog and deficiencies, it would take half of my budget to really begin to address this issue completely.

Senator TESTER. All right. Did you make that clear to the Interior Committee, that it was under funded even at \$2 million?

Mr. BLACK. I do not know that we did, sir, to be honest with you. A majority of what we do is underfunded.

Senator TESTER. The ranking member on the Interior Committee is here and the chairman happens to sit to the right of Senator Barrasso. It is an opportunity for you to do that if you so choose.

Mr. BLACK. As I said, all of our priorities are underfunded.

Senator TESTER. Let me go to Judge Day. By the way, Judge Day, the people behind you cannot see them, but you have some dynamite looking socks on. I just want to tell you that right now.

You talked about potential savings, a positive investment. I did too. I have a different perspective than you as a policymaker here in the United States Senate but you are on the ground getting the job done.

Could you flesh out for us where the savings come from?

Mr. DAY. It comes from a number of sources. It is primarily the savings of not having to put somebody in jail. That is number one. It also comes from those in wellness court whose original sentences were shortened because they completed wellness court.

It comes because they are in recovery and are able to work and create income. It comes from the taxes on that income. That is four things I can think of right off the top of my head. That is the majority of the savings.

Senator TESTER. What about jail capacity? How is your jail capacity?

Mr. DAY. It is filled all the time. The jails are full.

Senator TESTER. Does this help alleviate some of the pressure on the prisons?

Mr. DAY. It helps a lot.

Senator TESTER. I think Senator Franken pointed out that you are the keeper of the family ceremonial drum and sweat lodge. That is a big deal and truly quite an honor. From a cultural standpoint, it seems to me that you have better insight to that than most, absolutely better than most non-Natives but maybe better than most Natives.

Mr. DAY. Maybe in this room, but back at home, I am considered just an average Joe.

Senator TESTER. Could you talk about the positive impacts of traditional healing and what you are seeing to reduce recidivism?

Mr. DAY. Number one, we have the sweat lodge available for people who come in for healings, spiritual purification, and physical purification. In the sweat lodge, we also do other ceremonial things such as names and healing. We initiate new pipes and those kinds of things.

The ceremonial drum is a big drum like a palala drum but it is not a palala drum which is more social. This is just for ceremonies and we feast those drums. We call it feasting those drums when we are having a ceremony. We feast those drums in the spring and the fall.

The songs that are sung are healing songs that come from peoples' dreams. We have people participating in those ceremonial things.

A number of us are pipe carriers. As a pipe carrier, you do not own that pipe but you are keeping it for the people, for the good of the people. When somebody gives you tobacco and asks you to

do some kind of ceremony for them, you have to say yes, if it is possible you can do that.

Sometimes people come to me and ask me for more than I can do. I will refer them to someone I know who is capable of doing that particular thing. We do what we can with what we have. We have different ways of doing these things.

Senator TESTER. Thank you for your work. I think in a time where budgets are crunched, budgets are always crunched, but if we can do things that are more effective and actually saves money, we ought to be taking a good look at that.

I have one more question and it has nothing to do with anything that my staff wrote on the sheet of paper. This is to Dr. Ahumada.

You had said to a previous Senator that you are working on a degree in Traditional Healing, is that correct?

Dr. AHUMADA. No.

Senator TESTER. Is that what you answered?

Dr. AHUMADA. No, it was Indigenous Public Health. We have had a certificate and Associate's in Indigenous Public Health.

Senator TESTER. Tell me the difference between indigenous public health and indigenous healing or just tell me what indigenous public health is.

Dr. AHUMADA. It is public health focusing on the indigenous communities. It focuses on the indigenous communities but takes in all the science and all the traditional study of public health as we know it around the world and applying it to the specific needs of indigenous communities.

Senator TESTER. That is in degree form, right, or is that a class?

Dr. AHUMADA. We are actually developing the program as a track, as a concentration.

Senator TESTER. It interests me because I think it has potential to maybe help us. Looking at the way we deal with courts is one form of healing and this is another. As my grandmother said, there are highways where the action is. You may be able to develop some action that we may be able to utilize from a policy standpoint.

Dr. AHUMADA. Thank you, Senator. We view that as one of the most promising of our academic initiatives.

Senator TESTER. It is interesting. Whether I understood the first time or not, it is still interesting.

Thank you all very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Tester.

Mr. Black, I want to follow up what Senator Tester discussed, some of the earlier questioning in terms of the issue related to dams.

In your written testimony, you stated, "BIA has identified 137 high hazard dams but only 34 of them have actually been evaluated." Of those evaluated, you found 14 dams were considered unacceptable risks. I was wondering what is an unacceptable risk dam?

Mr. BLACK. I think that would depend upon what came out of the assessment. It could be certain conditions that would lead to a higher risk of failure on the dam and any type of deficiencies that may relate to that.

The CHAIRMAN. The next question that comes to mind would be, is this something that can actually be repaired if there are adequate resources, or is this something where you are talking about replacement?

Mr. BLACK. Again, I think that would be dependent upon the condition of the dam or what the exact deficiency was. There may be cases where we can go in and make repairs.

As to what Senator Daines mentioned earlier regarding the Crow Dam, we are currently under design on that spillway. In that case, if we are able to design a fix for that spillway, we will not have to replace the entire dam.

The CHAIRMAN. In your written testimony, you also indicated that BIA is responsible for 700 low hazard dams across Indian Country. The Indian Dam Safety Act, passed 22 or 23 years ago, was intended to prevent the loss of life and property from dam failure by improving the safety of dams.

This Act requires an annual report which would include the list of the dams, the status and maintenance action plan. The staff had multiple requests. The Committee has not received any complete information on the BIA low hazard dams. Can you explain why we are having such a hard time getting that list and when we will be able to get that information?

Mr. BLACK. I apologize that did not get to you before the hearing today. We do have people working on gathering all that information so that we can present it to you.

The CHAIRMAN. We would appreciate it.

The DRIFT Act is going to provide funding for this backlog of deferred maintenance for high hazard dams and that second category for low hazard dams. The bill is intended to address the backlog to help prevent the loss of life and property.

If this deferred maintenance is not addressed for the low hazard dams, we are trying to determine with your staff what turns something from low hazard into high hazard and if we do not do the maintenance on the low hazard, is there a likelihood that low hazard dams will ultimately become high hazard and the potential that those would fail as the result of deferred maintenance?

Mr. BLACK. My gut instinct is that there could be that potential for some of them. Some low hazard dams may have risk of failure but that does not necessarily put it into the classification of high hazard because that classification is based on what is the risk of life safety if this dam was to fail.

If we have a low hazard dam that carries very little water behind it, if there are no houses or people at risk down below, it may still be a low hazard dam in poor condition.

The CHAIRMAN. Thank you for that.

There are no other members to ask specific questions of you but they may have written questions they will submit. If you do get a written question, I hope you would respond quickly. The hearing record will be open for two weeks.

I want to thank each of you for being here today, for your time and your testimony.

With that, the hearing is adjourned.

[Whereupon, at 3:40 p.m., the Committee was adjourned.]

A P P E N D I X

THE NAVAJO NATION

Hon. John Barrasso,
Chairman, and
Hon. Jon Tester,
Vice-Chairman,
Senate Committee on Indian Affairs,
Washington. DC.

RE: DINÉ COLLEGE ACT (S. 2564)

Dear Chairman Barrasso and Vice-Chairman Tester:

We respectfully request your support for *The Diné College Ad of 2016* (S. 2564), currently scheduled for a hearing on April 13, 2016. As the President and Vice President of the Navajo Nation, we strongly support the reauthorization of the Diné College Act 1978 through this bill to modernize prior legislation for operations, maintenance, and construction for the College.

Diné College was established in 1968 as the first tribally-controlled community college in the United States. Under the direction of an eight-member Board of Regents confirmed by the Nabik' iyat'i Committee of the Navajo Nation Council. Diné College has the responsibility to serve residents of the 26,000 square mile Navajo Nation which spans the states of Arizona, New Mexico and Utah. As a higher education institution, Diné College awards 17 associate degrees, four certificates and two bachelor degrees. It is also accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools.

In addition to the basic "operations and maintenance" funding, the bill addresses the urgent need for construction funding by authorizing a mere \$2,000,000, over four years, for structural improvements for buildings over 48 years old.

For nearly four decades Congress has provided the necessary funding for the Diné College. We encourage your support in upholding the Treaty of 1986 between the United States of America and the Navajo Tribe of Indians which explicitly provides for the education of the citizens of the Navajo Nation. We thank you for consideration of our request.

Respectfully,

RUSSELL BEGAYE, PRESIDENT; JONATHAN NEZ, VICE PRESIDENT,
The Navajo Nation.

NATIONAL INDIAN EDUCATION ASSOCIATION (NIEA)

Hon. John Barrasso,
Chairman, and
Hon. Jon Tester,
Vice-Chairman,
Senate Committee on Indian Affairs,
Washington. DC.

RE: REAUTHORIZATION OF THE DINÉ COLLEGE ACT (S. 2564)

Dear Chairman Barrasso and Vice-Chairman Tester:

On behalf of the National Indian Education Association (NIEA), the oldest and largest Native organization representing over 2,500 Native educators, students, teachers, parents, and tribal leaders, I am writing to express our support for the reauthorization of the Diné College Act. This bicameral effort builds upon Congress' focus on supporting Native education in the 21st century. S. 2564 is a step in right direction to honor the fiduciary trust obligation the Federal Government has with tribes to provide parity in access and equal resources to Native education.

The Diné College is the first tribally controlled college established to open their doors to Navajo students in postsecondary education. S.2564 is critical and seeks to ensure that the Navajo Nation and Navajo people:

- (1) Exercise their right to self-determination
- (2) Maintain and strengthen cultural based practices within higher education institutions
- (3) Improve their economic and social conditions through higher education and postsecondary vocational training

NIEA appreciates your hard work on funding critical educational programs for American Indian, Alaska Native, and Native Hawaiian students. We are asking for your continued support in ensuring that these programs are protected by funding them at the levels already approved by Congress.

Thank you,

PATRICIA WHITEFOOT.

